

MT LEGISLATIVE HISTORY

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H. Committee on Natural Resources

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Did this bill originate in an interim committee? Yes No

Committee

Report

1 *Sen* BILL NO. *515*
 2 INTRODUCED BY *Stephen Roche*
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO MAKE ONLY THOSE
 5 AMENDMENTS NECESSARY TO BRING THE MONTANA STRIP AND
 6 UNDERGROUND MINE RECLAMATION ACT INTO COMPLIANCE WITH PUBLIC
 7 LAW 95-87, THE SURFACE MINING CONTROL AND RECLAMATION ACT OF
 8 1977; TO REPEAL THE STRIP-MINED COAL CONSERVATION ACT;
 9 AMENDING SECTIONS 70-30-102, 82-4-202 THROUGH 82-4-205,
 10 82-4-221 THROUGH 82-4-223, 82-4-225, 82-4-227, 82-4-228,
 11 82-4-231, 82-4-232, 82-4-235, 82-4-239, 82-4-251, 82-4-252,
 12 82-4-254; AND REPEALING SECTIONS 82-3-101 THROUGH 82-3-110,
 13 MCA."

14
 15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 Section 1. Section 82-4-202, MCA, is amended to read:

17 "82-4-202. Policy -- findings. (1) It is the declared
 18 policy of this state and its people to:

19 (a) maintain and improve the state's clean and
 20 healthful environment for present and future generations;

21 (b) protect its environmental life-support system from
 22 degradation;

23 (c) prevent unreasonable degradation of its natural
 24 resources;

25 (d) restore, enhance, and preserve its scenic,

1 historic, archeologic, scientific, cultural, and
 2 recreational sites;

3 (e) demand effective reclamation of all lands
 4 disturbed by the taking of natural resources and maintain
 5 state administration of the reclamation program;

6 (f) require the legislature to provide for proper
 7 administration and enforcement, create adequate remedies,
 8 and set effective requirements and standards (especially as
 9 to reclamation of disturbed lands) in order to achieve the
 10 aforementioned objectives; and

11 (g) provide for the orderly development of coal
 12 resources through strip or underground mining to assure the
 13 wise use of these resources and prevent the failure to
 14 conserve coal.

15 (2) The legislature hereby finds and declares that:

16 (a) in order to achieve the aforementioned policy
 17 objectives, promote the health and welfare of the people,
 18 control erosion and pollution, protect domestic stock and
 19 wildlife, preserve agricultural and recreational
 20 productivity, save cultural, historic, and aesthetic values,
 21 and assure a long-range dependable tax base, it is
 22 reasonably necessary to require, after March 16, 1973, that
 23 all strip-mining and underground-mining operations be
 24 limited to those for which ~~annual~~ 5-year permits are
 25 granted, that no permit be issued until the operator

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 be run in its entirety unless necessary

1 presents a comprehensive plan for reclamation and
 2 restoration and a coal conservation plan, together with an
 3 adequate performance bond, and the plan is approved, that
 4 certain other things must be done, that certain remedies are
 5 available, and that certain lands because of their unique or
 6 unusual characteristics may not be strip-mined or
 7 underground-mined under any circumstances; all as more
 8 particularly appears in the remaining provisions of this
 9 part, and that the department be given authority to
 10 administer and enforce a reclamation program that complies
 11 with Public Law 95-87, the Surface Mining Control and
 12 Reclamation Act of 1977, as amended;

13 (b) this part be deemed to be an exercise of the
 14 authority granted in the Montana constitution, as adopted
 15 June 6, 1972, and, in particular, a response to the mandate
 16 expressed in Article IX thereof and also be deemed to be an
 17 exercise of the general police power to provide for the
 18 health and welfare of the people."

19 Section 2. Section 82-4-203, MCA, is amended to read:

20 "82-4-203. Definitions. Unless the context requires
 21 otherwise, in this part the following definitions apply:

22 (1) "Abandoned" means an operation where no mineral is
 23 being produced and where the department determines that the
 24 operation will not continue or resume.

25 (2) "Alluvial valley floor" means the unconsolidated

1 stream-laid deposits holding streams where water
 2 availability is sufficient for subirrigation or flood
 3 irrigation agricultural activities; but the term does not
 4 include upland areas which are generally overlain by a thin
 5 veneer of colluvial deposits composed chiefly of debris from
 6 sheet erosion, deposits by unconcentrated runoff or slope
 7 wash, together with talus, other mass movement accumulation,
 8 and windblown deposits.

9 (2)(3) "Aquifer" means any geologic formation or
 10 natural zone beneath the earth's surface that contains or
 11 stores water and transmits it from one point to another in
 12 quantities which permit or have the potential to permit
 13 economic development as a water source.

14 (3)(4) "Area of land affected" means the area of land
 15 from which overburden is to be or has been removed and upon
 16 which the overburden is to be or has been deposited and
 17 includes all land overlying any tunnels, shafts, or other
 18 excavations used to extract the mineral, lands affected by
 19 the construction of new railroad loops and roads or the
 20 improvement or use of existing railroad loops and roads to
 21 gain access and to haul the mineral, processing facilities
 22 at or near the mine site or other mine associated
 23 facilities, waste deposition areas, treatment ponds, and any
 24 other surface or subsurface disturbance associated with
 25 strip mining or underground mining, and all activities

necessary and incident to the reclamation of such operations.

(4)(5) "Bench" means the ledge, shelf, table, or terrace formed in the contour method of strip mining.

(5)(6) "Board" means the board of land commissioners provided for in Article X, section 4, of the constitution of this state.

(7) "Coal conservation plan" means the planned course of conduct of a strip- or underground-mining operation to include plans for the removal and utilization of minable and marketable coal located within the area planned to be mined.

(6)(8) "Commissioner" means the commissioner of state lands provided for in 2-15-3202.

(7)(9) "Contour strip mining" means that strip-mining method commonly carried out in areas of rough and hilly topography in which the coal or mineral seam outcrops along the side of the slope and entrance is made to the seam by excavating a bench or table cut at and along the site of the seam outcropping with the excavated overburden commonly being cast down the slope below the mineral seam and the operating bench.

(8)(10) "Degree" means from the horizontal and in each case is subject to a tolerance of 5% error.

(9)(11) "Department" means the department of state lands provided for in Title 2, chapter 15, part 32.

(12) "Failure to conserve coal" means the nonremoval or nonutilization of strippable and marketable coal by an operation, provided that the nonremoval or nonutilization of minable and marketable coal in accordance with reclamation standards established by the department shall not be considered failure to conserve coal.

(10)(13) "Fill bench" means that portion of a bench or table which is formed by depositing overburden beyond or downslope from the cut section as formed in the contour method of strip mining.

(14) "Imminent danger to the health and safety of the public" means the existence of any condition or practice or any violation of a permit or other requirement of this part in a strip- or underground-coal-mining and reclamation operation that could reasonably be expected to cause substantial physical harm to persons outside the permit area before such condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose himself or herself to the danger during the time necessary for abatement.

(15) "Marketable coal" means a minable coal that is economically feasible to mine and is fit for sale in the usual course of trade.

~~(11)(16)~~ "Method of operation" means the method or manner by which the cut, open pit, shaft, or excavation is made, the overburden is placed or handled, water is controlled, and other acts are performed by the operator in the process of uncovering and removing the minerals that affect the reclamation of the area of land affected.

~~(17) "Minnable coal" means that coal which can be removed through strip- or underground-mining methods adaptable to the location that coal is being mined or is planned to be mined.~~

~~(12)(18)~~ "Mineral" means coal and uranium.

~~(13)(19)~~ "Operation" means all of the premises, facilities, railroad loops, roads, and equipment used in the process of producing and removing mineral from and reclaiming a designated strip-mine or underground-mine area and all activities, including excavation incident thereto, or prospecting for the purpose of determining the location, quality, or quantity of a natural mineral deposit.

~~(14)(20)~~ "Operator" means a person engaged in strip mining or underground mining who removes or intends to remove more than 10,000 cubic yards of mineral or overburden or a person engaged in coal mining who removes or intends to remove more than 250 tons of coal from the earth by mining within 12 consecutive calendar months in any one location.

~~(15)(21)~~ "Overburden" means all of the earth and other

materials which lie above a natural mineral deposit and also means such earth and other material after removal from their natural state in the process of mining.

~~(16)(22)~~ "Person" means a person, partnership, corporation, association, or other legal entity or any political subdivision or agency of the state or federal government.

~~(23) "Prime farmland" means that land previously prescribed by the United States secretary of agriculture on the basis of such factors as moisture availability, temperature regime, chemical balance, permeability, surface-layer composition, susceptibility to flooding, and erosion characteristics and which historically has been used for intensive agricultural purposes and as defined in the Federal Register.~~

~~(17)(24)~~ "Prospecting" means the removal of overburden, core drilling, construction of roads, or any other disturbance of the surface for the purpose of determining the location, quantity, or quality of a natural mineral deposit.

~~(18)(25)~~ "Reclamation" means backfilling, subsidence stabilization, water control, grading, highwall reduction, topsoiling, planting, revegetation, and other work to restore an area of land affected by strip mining or underground mining under a plan approved by the department.

1 ~~(19)~~(26) "Strip mining" means any part of the process
 2 followed in the production of mineral by the opencut method,
 3 including mining by the auger method or any similar method
 4 which penetrates a mineral deposit and removes mineral
 5 directly through a series of openings made by a machine
 6 which enters the deposit from a surface excavation or any
 7 other mining method or process in which the strata or
 8 overburden is removed or displaced in order to recover the
 9 mineral.

10 ~~(20)~~(27) "Subsidence" means a vertically downward
 11 movement of overburden materials resulting from the actual
 12 mining of an underlying mineral deposit or associated
 13 underground excavations.

14 ~~(21)~~(28) "Surface owner" means a person who holds legal
 15 or equitable title to the land surface and whose principal
 16 place of residence is on the land or who personally conducts
 17 farming or ranching operations upon a farm or ranch unit to
 18 be directly affected by strip-mining operations or who
 19 receives directly a significant portion of his income, if
 20 any, from such farming or ranching operations or the state
 21 of Montana where the state owns the surface.

22 ~~(22)~~(29) "Topsoil" means the unconsolidated mineral
 23 matter naturally present on the surface of the earth that
 24 has been subjected to and influenced by genetic and
 25 environmental factors of parent material, climate, macro-

1 and micro-organisms, and topography, all acting over a
 2 period of time, and that is necessary for the growth and
 3 regeneration of vegetation on the surface of the earth.

4 ~~(23)~~(30) "Underground mining" means any part of the
 5 process followed in the production of a mineral such that
 6 vertical or horizontal shafts, slopes, drifts, or incline
 7 planes connected with excavations penetrating the mineral
 8 stratum or strata are utilized and includes mining by in
 9 situ methods.

10 ~~(31) "Unwarranted failure to comply" means the failure~~
 11 ~~of a permittee to prevent the occurrence of any violation of~~
 12 ~~his permit or any requirement of this part due to~~
 13 ~~indifference, lack of diligence, or lack of reasonable care,~~
 14 ~~or the failure to abate any violation of such permit or this~~
 15 ~~part due to indifference, lack of diligence, or lack of~~
 16 ~~reasonable care.~~

17 ~~(24)~~(32) "Waiver" means any document which demonstrates
 18 the clear intention to release rights in the surface estate
 19 for the purpose of permitting the extraction of subsurface
 20 minerals by strip-mining methods.

21 ~~(25)~~(33) "Written consent" means such written statement
 22 as is executed by the owner of the surface estate, upon a
 23 form approved by the department, demonstrating that such
 24 owner consents to entry of an operator for the purpose of
 25 conducting strip-mining operations and that such consent is

1 given only to such strip-mining and reclamation operations
2 which fully comply with the terms and requirements of this
3 part."

4 Section 3. Section 82-4-204, MCA, is amended to read:
5 "82-4-204. Board orders, rules, and hearings. The
6 board shall:

7 (1) ~~issue, after an opportunity for a hearing,~~ orders
8 requiring an operator to adopt the remedial measures
9 necessary to comply with this part and rules adopted under
10 this part;

11 (2) issue, after an opportunity for a hearing, a final
12 order directing the department to revoke a permit when the
13 requirements set forth by the notice of noncompliance, order
14 of suspension, or an order of the board requiring remedial
15 measures have not been complied with according to the terms
16 herein;

17 (3) adopt, after an opportunity for a hearing, general
18 rules pertaining to strip mining and to underground mining
19 to accomplish the purposes of this part;

20 (4) conduct hearings under provisions of this part or
21 rules adopted by the board."

22 Section 4. Section 82-4-205, MCA, is amended to read:
23 "82-4-205. Administration by department of state
24 lands. The department:

25 (1) shall exercise general supervision,

1 administration, and enforcement of this part and all rules
2 and orders adopted under this part;

3 (2) shall examine and pass upon all plans and
4 specifications submitted by the operator for the method of
5 operation, subsidence stabilization, water control,
6 backfilling, grading, highwall reduction, topsoiling, and
7 for the reclamation of the area of land affected by his
8 operation;

9 (3) shall order the suspension of any permit for
10 failure to comply with this part or any rule adopted under
11 this part;

12 (4) shall order the halting of any operation that is
13 started without first having secured a permit as required by
14 this part or order the cessation of operations not in
15 compliance with this part in accordance with 82-4-251;

16 (5) shall make investigations and inspections
17 necessary to insure compliance with this part;

18 (6) may encourage and conduct investigations,
19 research, experiments, and demonstrations and collect and
20 disseminate information relating to strip mining and to
21 underground mining and reclamation of lands and waters
22 affected by strip mining and underground mining;

23 (7) may adopt rules with respect to the filing of
24 reports, the issuance of permits, monitoring, and other
25 matters of procedure and administration;

1 (8) may conduct hearings under the provisions of this
2 part."

3 Section 5. Section 82-4-221, MCA, is amended to read:

4 "82-4-221. Mining permit required. (1) An operator may
5 not engage in strip or underground mining without having
6 first obtained from the department a permit designating the
7 area of land affected by the operation, which designation
8 shall include all lands reasonably anticipated to be mined
9 or otherwise affected during the applicable 5-year period.
10 The permit shall authorize the operator to engage in strip
11 or underground mining upon the area of land described in his
12 application and designated in the permit for a period of 5
13 years from the date of its issuance. Such permit shall be
14 renewable upon each 5-year anniversary thereafter upon
15 application to the department at least 30 but not more than
16 60 days prior to the renewal date so long as the operator is
17 in compliance with the requirements of this part, the rules
18 hereunder, and the reclamation plan provided for in 82-4-231
19 and agrees to comply with all applicable laws and rules in
20 effect at the time of renewal. Such renewal shall further be
21 subject to the denial provisions of 82-4-227, 82-4-234, and
22 82-4-251. On application for renewal, the burden shall be
23 on the opponents of renewal to demonstrate that the permit
24 should not be renewed. A permit shall terminate if the
25 permittee has not commenced strip- or underground-mining

1 operations pursuant to the permit within 3 years of the
2 issuance of the permit. However, the department may grant
3 reasonable extensions of time upon a showing that such
4 extensions are necessary by reason of litigation precluding
5 the commencement or threatening substantial economic loss to
6 the permittee or by reason of conditions beyond the control
7 and without the fault or negligence of the permittee. With
8 respect to coal to be mined for use in a synthetic fuel
9 facility or specific major electric generating facility, the
10 permittee is considered to have commenced strip- or
11 underground-mining operations at such time as the
12 construction of the synthetic or generating facility is
13 initiated.

14 (2) As a condition to the issuance of every permit
15 issued under this part, an authorized representative of the
16 department shall, without advance notice, have the right of
17 entry to, upon, or through a strip- or
18 underground-coal-mining operation or any premises in which
19 any records required to be maintained under this part are
20 located and may, at reasonable times and without delay, have
21 access to copy any records and inspect any monitoring
22 equipment or method of operation required under this part.

23 (3) During the term of the permit, the permittee may
24 submit an application for a revision of the permit, together
25 with a revised reclamation plan, to the department. The

1 department may not approve the application unless it finds
 2 that reclamation in accordance with this part would be
 3 accomplished. Application for minor revision shall be
 4 approved or disapproved within a reasonable time, depending
 5 on the scope and complexity, but in no case longer than 120
 6 days. Applications for major revisions are subject to all
 7 the permit application requirements and procedures."

8 Section 6. Section 82-4-222, MCA, is amended to read:
 9 "82-4-222. Permit application. (1) An operator
 10 desiring a permit shall file an application which shall
 11 contain a complete and detailed plan for the mining,
 12 reclamation, revegetation, and rehabilitation of the land
 13 and water to be affected by the operation. Such plan shall
 14 reflect thorough advance investigation and study by the
 15 operator and shall include all known or readily discoverable
 16 past and present uses of the land and water to be affected
 17 and the approximate periods of such use and shall state:

18 (a) the location and area of land to be affected by
 19 the operation, with a description of access to the area from
 20 the nearest public highways;

21 (b) the names and addresses of the owners of record of
 22 the surface of the area of land to be affected by the permit
 23 and the owners of record of all surface area within one-half
 24 mile of any part of the affected area;

25 (c) the names and addresses of the present owners of

1 record of all subsurface minerals in the land to be
 2 affected;

3 (d) the source of the applicant's legal right to mine
 4 the mineral on the land affected by the permit;

5 (e) the permanent and temporary post-office addresses
 6 of the applicant;

7 (f) whether the applicant or any person associated
 8 with the applicant holds or has held any other permits under
 9 this part and an identification of those permits;

10 (g) whether the applicant is in compliance with
 11 82-4-251 and, if known, whether every officer, partner,
 12 director, or any individual owning of record or
 13 beneficially, alone or with associates, 10% or more of any
 14 class of stock of the applicant is subject to any of the
 15 provisions of 82-4-251 and he shall so certify and whether
 16 any of the foregoing parties or persons have ever had a
 17 strip-mining or underground-mining license or permit issued
 18 by any other state or federal agency revoked or have ever
 19 forfeited a strip-mining or underground-mining bond or a
 20 security deposited in lieu of a bond and, if so, a detailed
 21 explanation of the facts involved in each case must be
 22 attached;

23 (h) the names and addresses of any persons who are
 24 engaged in strip or underground mining activities on behalf
 25 of the applicant;

(i) the annual rainfall and the direction and average velocity of the prevailing winds in the area where the applicant has requested a permit;

(j) the results of any test borings or core samplings which the applicant or his agent has conducted on the land to be affected, including the nature and the depth of the various strata or overburden and topsoil, the quantities and location of subsurface water and its quality, the thickness of any mineral seam, an analysis of the chemical properties of such minerals, including the acidity, sulphur content, and trace mineral elements of any coal seam, as well as the British thermal unit (Btu) content of such seam, and an analysis of the overburden, including topsoil. If test borings or core samplings are submitted, each permit application shall contain two copies each of two sets of geologic cross sections accurately depicting the known geologic makeup beneath the surface of the affected land. Each set shall depict subsurface conditions at 500-foot intervals across the surface and shall run at a 90-degree angle to the other set unless the department determines that closer intervals are required. Each cross section shall depict the thickness and geologic character of all known strata beginning with the topsoil. In addition, each application for an underground mining permit shall be accompanied by cross sections and maps showing the proposed

underground locations of all shafts, entries, and haulageways or other excavations to be excavated during the permit year. These cross sections shall also include all existing shafts, entries, and haulageways.

(k) the name and date of a daily newspaper of general circulation within the county in which the applicant has will prominently published publish at least once a week for 4 successive weeks after submission of the application an announcement of his application for a strip-mining or underground-mining permit and a detailed description of the area of land to be affected should a permit be granted;

(l) a determination of the probable hydrologic consequences of the mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, quantity and quality of water in surface- and ground-water systems, including the dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the mine site and surrounding areas, so that cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability can be made. However, this determination is not required until such time as hydrologic information on the general area prior to mining is made available from an appropriate federal or state agency. The permit may not be approved until such information is available and is

1 incorporated into the application:

2 (m) a coal conservation plan; and

3 ~~++(n)~~ such other or further information as the
4 department may require.

5 (2) The application for a permit shall be accompanied
6 by two copies of all maps meeting the requirements of the
7 subsections below. The maps shall:

8 (a) identify the area to correspond with the
9 application;

10 (b) show any adjacent deep mining or surface mining
11 and the boundaries of surface properties and names of owners
12 of record of the affected area and within 1,000 feet of any
13 part of the affected area;

14 (c) show the names and locations of all streams,
15 creeks, or other bodies of water, roads, buildings,
16 cemeteries, oil and gas wells, and utility lines on the area
17 of land affected and within 1,000 feet of such area;

18 (d) show by appropriate markings the boundaries of the
19 area of land affected, any cropline of the seam or deposit
20 of mineral to be mined, and the total number of acres
21 involved in the area of land affected;

22 (e) show the date on which the map was prepared and
23 the north point;

24 (f) show the final surface and underground water
25 drainage plan on and away from the area of land affected.

1 This plan shall indicate the directional and volume flow of
2 water, constructed drainways, natural waterways used for
3 drainage, and the streams or tributaries receiving the
4 discharge.

5 (g) show the proposed location of waste or refuse
6 area;

7 (h) show the proposed location of temporary subsoil
8 and topsoil storage area;

9 (i) show the location of test boring holes;

10 (j) show the surface location lines of any geologic
11 cross sections which have been submitted;

12 (k) show a listing of plant varieties encountered in
13 the area to be affected and their relative dominance in the
14 area, together with an enumeration of tree varieties and the
15 approximate number of each variety occurring per acre on the
16 area to be affected, and the locations generally of the
17 various kinds and varieties of plants, including but not
18 limited to grasses, shrubs, legumes, forbs, and trees;

19 (l) be certified as follows: "I, the undersigned,
20 hereby certify that this map is correct and shows to the
21 best of my knowledge and belief all the information required
22 by the mining laws of this state." The certification shall
23 be signed and notarized. The department may reject a map as
24 incomplete if its accuracy is not so attested.

25 (m) contain such other or further information as the

department may require.

(3) If the department finds that the probable total annual production at all locations of any strip- or underground-coal-mining operation applied for will not exceed 100,000 tons, any determination of probable hydrologic consequences that the department requires and the statement of result of test borings or core samplings shall, upon written request of the operator, be performed by a qualified public or private laboratory designated by the department. The department shall assume the cost of the determination and statement to the extent that it has received federal funds for this purpose.

(3)(4) In addition to the information and maps required above, each application for a permit shall be accompanied by detailed plans or proposals showing the method of operation, the manner, time or distance, and estimated cost for backfilling, subsidence stabilization, water control, grading work, highwall reduction, topsoiling, planting, revegetating, and a reclamation plan for the area affected by the operation, which proposals shall meet the requirements of this part and rules adopted under this part. The reclamation plan shall address the life of the operation and indicate the size, sequence, and the timing of the subareas for which it is anticipated that individual permits will be sought.

(5) Each applicant for a permit shall submit as part of the application a certificate issued by an insurance company authorized to do business in the state certifying that the applicant has in force for the strip- or underground-mining and reclamation operations for which the permit is sought a public liability insurance policy, or evidence that the applicant has satisfied other state or federal self-insurance requirements. This policy shall provide for personal injury and property damage protection in an amount adequate to compensate any persons damaged as a result of strip- or underground-coal-mining and reclamation operations, including use of explosives, and entitled to compensation under applicable provisions of state law. The permittee must maintain the policy in full force and effect during the term of the permit and any renewal until all reclamation operations have been completed.

(6) Each applicant for a strip-mining or underground-mining reclamation permit shall file a copy of his application for public inspection with the clerk and recorder at the courthouse of the county where the major portion of mining is proposed to occur."

Section 7. Section 82-4-223, MCA, is amended to read:

"82-4-223. Permit fee and surety bond. (1) An application fee of \$50 shall be paid before the permit required in this part shall be issued.

(2) ~~Before a permit may be issued, the operator shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in the penal sum to be determined by the board, on the recommendation of the commissioner, of not less than \$200 or more than \$2,500 for each acre or fraction thereof of the area of land affected, with a minimum bond of \$2,000 \$10,000, conditioned upon the faithful performance of the requirements set forth in this part and of the rules of the board. The operator may elect to deposit cash, negotiable bonds, or negotiable certificates of deposit of any bank organized or transacting business in the United States. The cash deposit or market value of such securities shall be equal to or greater than the amount of the bond required for the bonded area.~~ The level of bonding shall be relative to the degree of disturbance projected by the original permit and the annual report. A political subdivision or agency of the state need not file a bond unless required to do so by the board. ~~The board may require the filing of the bond prior to permit issuance or at any time thereafter shall adjust the amount of bond required if the cost of reclamation changes.~~

(3) In determining the amount of the bond ~~within the above limits~~, the board shall take into consideration the character and nature of the overburden, the future suitable

use of the land involved, and the cost of backfilling, grading, highwall reduction, subsidence stabilization, water control, topsoiling, and reclamation to be required, but in no event shall the bond be less than ~~than~~ the total estimated cost to the state of completing the work described in the reclamation plan."

Section 8. Section 82-4-225, MCA, is amended to read:

"82-4-225. Application for increase or reduction in permit area. The department may increase or reduce the area of land affected by an operation under a permit on application by an operator, but an increase may not extend the period for which an original permit was issued. An operator may, at any time, apply to the department for an amendment of the permit so as to increase or reduce the acreage affected by it. The operator shall file an application and map in the same form and with the same content as required for an original application under this part and shall pay an application fee of \$50 and shall file with the department a supplemental bond in the amount to be determined under 82-4-223 for each acre or fraction of an acre of the increase approved. All procedures of this part pertaining to original applications apply to applications for the increase of the area of land affected, except for incidental boundary revisions. If the department approves a reduction in the acreage covered by the original or

supplemental permit, it shall release the bond for each acre reduced, but in no case shall the bond be reduced below \$2,000 \$10,000, except as provided in 82-4-223."

Section 9. Section 82-4-227, MCA, is amended to read:

"82-4-227. Refusal of permit. (1) An application for a prospecting, strip-mining, or underground-mining permit ~~or~~ major revision shall not be approved by the department if ~~there is found unless~~ on the basis of the information set forth in the application, an on-site inspection, and an evaluation of the operation by the department, ~~the applicant has affirmatively demonstrated~~ that the requirements of the ~~this~~ part or ~~and~~ rules will not be observed or ~~and~~ that the proposed method of operation, backfilling, grading, subsidence stabilization, water control, highwall reduction, topsoiling, revegetation, or reclamation of the affected area cannot ~~can~~ be carried out consistently with the purpose of this part. ~~The applicant for a permit or major revision has the burden of establishing that his application is in compliance with this part and the rules adopted under it.~~

(2) The department shall not approve the application for a prospecting, strip-mining, or underground-mining permit where the area of land described in the application includes land having special, exceptional, critical, or unique characteristics or that mining or prospecting on that area would adversely affect the use, enjoyment, or

fundamental character of neighboring land having special, exceptional, critical, or unique characteristics. For the purposes of this part, land is defined as having such characteristics if it possesses special, exceptional, critical, or unique:

(a) biological productivity, the loss of which would jeopardize certain species of wildlife or domestic stock;

(b) ecological fragility, in the sense that the land, once adversely affected, could not return to its former ecological role in the reasonable foreseeable future;

(c) ecological importance, in the sense that the particular land has such a strong influence on the total ecosystem of which it is a part that even temporary effects felt by it could precipitate a system-wide reaction of unpredictable scope or dimensions; or

(d) scenic, historic, archeologic, topographic, geologic, ethnologic, scientific, cultural, or recreational significance. (In applying this subsection, particular attention should be paid to the inadequate preservation previously accorded Plains Indian history and culture.)

~~(3) The department may not approve an application for a strip-mining or underground-mining permit or major revision unless the application affirmatively demonstrates that:~~

~~(a) the assessment of the probable cumulative impact~~

1 of all anticipated mining in the area on the hydrologic
 2 balance has been made by the department and the proposed
 3 operation thereof has been designed to prevent material
 4 damage to the hydrologic balance outside the permit area;
 5 and

6 (b) the proposed surface-coal-mining operation would
 7 not:

8 (i) interrupt, discontinue, or preclude farming on
 9 alluvial valley floors that are irrigated or naturally
 10 subirrigated, excluding undeveloped rangelands that are not
 11 significant to farming on alluvial valley floors and those
 12 lands as to which the regulatory authority finds that if the
 13 farming that will be interrupted, discontinued, or precluded
 14 is of such small acreage as to be of negligible impact on
 15 the farm's agricultural production; or

16 (ii) materially damage the quantity or quality of water
 17 in surface-water or underground-water systems that supply
 18 these valley floors in subsection (31)(b)(i).

19 (4) Subsection (31)(b) does not affect those strip- or
 20 underground-coal-mining operations that in the year
 21 preceding the enactment of Public Law 95-87 produced coal in
 22 commercial quantities and were located within or adjacent to
 23 alluvial valley floors or had obtained specific permit
 24 approval by the department to conduct surface-coal-mining
 25 operations within alluvial valley floors. If coal deposits

1 are precluded from being mined under this subsection, the
 2 commissioner shall certify to the secretary of interior that
 3 the mineral owner or lessee may be eligible for
 4 participation in coal exchange programs pursuant to section
 5 510(5) of Public Law 95-87.

6 (5) If the area proposed to be mined contains prime
 7 farmland, the department may not grant a permit to mine on
 8 the prime farmland unless it finds in writing that the
 9 applicant has the technological capability to restore the
 10 mined area within a reasonable time, to equivalent or
 11 higher levels of yield as nonmined prime farmland in the
 12 surrounding area under equivalent levels of management and
 13 can meet the soil reconstruction standards of 82-4-232(3).
 14 Nothing in this subsection applies to any permit issued
 15 prior to August 3, 1977, or to any revisions or renewals
 16 thereof, or to any existing strip- or underground-mining
 17 operations for which a permit was issued prior to August 3,
 18 1977.

19 (3)(6) If the department finds that the overburden on
 20 any part of the area of land described in the application
 21 for a prospecting, strip-mining, or underground-mining
 22 permit is such that experience in the state with a similar
 23 type of operation upon land with similar overburden shows
 24 that substantial deposition of sediment in streambeds,
 25 subsidence, landslides, or water pollution cannot feasibly

be prevented, the department shall delete that part of the land described in the application upon which the overburden exists. The burden is on the applicant to demonstrate that any area should not be deleted under this subsection.

(4)(7) If the department finds that the operation will constitute a hazard to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, or other public property, the department shall delete those areas from the prospecting, strip-mining, or underground-mining permit application before it can be approved. In no case may strip or underground mining be allowed within 300 feet of any occupied dwelling, unless waived by the owner, nor within 300 feet of any public building, school, church, community, or institutional building, or public park; nor within 100 feet of a cemetery; nor within 100 feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join such right-of-way line. The department may permit such roads to be relocated or the area affected to lie within 100 feet of the road, if after public notice and opportunity for public hearing in the locality, a written finding is made that the interests of the public and the landowners affected will be protected.

(8) No surface mining may be conducted within 500 feet of active or abandoned underground mines in order to prevent

breakthroughs and to protect health or safety of miners. The department shall permit an operator to mine near, through, or partially through an abandoned underground mine or closer to an active underground mine if:

(a) the nature, timing, and sequencing of specific strip-mine activities and specific underground-mine activities are jointly approved by the department and the regulatory authority concerned with the health and safety of underground miners; and

(b) such operations will result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public.

(9) The department may not approve an application for a strip- or underground-coal-mining operation if the area proposed to be mined is included within an area designated unsuitable for strip or underground coal mining or within an area under review for this designation under an administrative proceeding, unless in such an area as to which an administrative proceeding has commenced pursuant to this part, the operator making the permit application demonstrates that prior to January 1, 1977, he made substantial legal and financial commitments in relation to the operation for which he is applying for a permit.

(10) No permit or major permit revision for a strip- or underground-coal-mining operation may be issued unless the

1 applicant has affirmatively demonstrated by its coal
 2 conservation plan that no failure to conserve coal will
 3 occur. The department may require the applicant to submit
 4 any information it considers necessary for review of the
 5 coal conservation plan.

6 (11) Whenever information available to the department
 7 indicates that any strip- or underground-mining operation
 8 owned or controlled by the applicant is currently in
 9 violation of Public Law 95-87, as amended, or any state law
 10 required by Public Law 95-87, as amended, or any law, rule,
 11 or regulation of the United States or of any department or
 12 agency in the United States pertaining to air or water
 13 environmental protection, the department shall not issue a
 14 strip-mining or underground-mining permit or major revision
 15 until the applicant submits proof that the violation has
 16 been corrected or is in the process of being corrected to
 17 the satisfaction of the administering agency.

18 (12) The department may not issue a strip-mining or
 19 underground-mining permit or major revision to any applicant
 20 which it finds, after an opportunity for hearing, owns or
 21 controls any strip- or underground-mining operation which
 22 has demonstrated a pattern of willful violations of Public
 23 Law 95-87, as amended, or any state law required by Public
 24 Law 95-87, as amended, of such a nature and duration and
 25 with such resulting irreparable damage to the environment to

1 indicate an intent not to comply with the revisions of this
 2 part.

3 (13) Subject to valid existing rights, no strip- or
 4 underground-coal-mining operations except those which
 5 existed as of August 3, 1977, may be conducted on private
 6 lands within the boundaries of units of the national park
 7 system, the national wildlife refuge systems, the national
 8 wilderness preservation system, the wild and scenic rivers
 9 system, including study rivers designated under section 5(a)
 10 of the Wild and Scenic Rivers Act, or national recreation
 11 areas designated by act of congress."

12 NEW SECTION. Section 10. Designation of land
 13 unsuitable for coal mining. (1) Any person having an
 14 interest that is or may be adversely affected may petition
 15 the department to have an area designated as unsuitable for
 16 strip- or underground-coal-mining operations, or to have a
 17 designation terminated. The petition shall contain
 18 allegations of facts with supporting evidence which would
 19 tend to establish the allegations. Within 10 months after
 20 receipt of the petition, the department shall hold a public
 21 hearing in the locality of the affected area after giving
 22 appropriate notice and publication of the date, time, and
 23 location thereof. Before the hearing, any person may
 24 intervene by filing allegations of facts with supporting
 25 evidence which would tend to establish the allegations.

Within 60 days after the hearing, the department shall issue and furnish to the petitioner and any other party to the hearing, a written decision regarding the petition and the reasons therefor. The hearing need not be held if all petitioners reach agreement prior to the requested hearing and withdraw their request.

(2) If petitioned, the department shall review the area petitioned for pursuant to this section, and:

(a) shall designate it as an area unsuitable for all or certain types of strip- or underground-coal-mining operations if it is determined that reclamation pursuant to the requirements of this part is not technologically and economically feasible; and

(b) may designate it as an area unsuitable for all or certain types of strip or underground coal mining if the proposed coal mining operations will:

(i) be incompatible with existing state or local land-use plans or programs to the extent they affect mining in the area; or

(ii) affect fragile or historic lands in which these operations could result in significant damage to important historic, cultural, scientific, and esthetic values and natural systems; or

(iii) affect renewable resource lands in which these operations could result in a substantial loss or reduction

of long-range productivity of water supply or of food or fiber products, these lands to include aquifers and aquifer recharge areas; or

(iv) affect natural hazard lands in which these operations could substantially endanger life and property, these lands to include areas subject to frequent flooding and areas of unstable geology.

(3) Prior to designating any land areas as unsuitable for strip- or underground-coal-mining operations, the department shall prepare a detailed statement on:

(a) the potential coal resources of the area;

(b) the demand for coal resources; and

(c) the impact of this designation on the environment, economy, and supply of coal.

(4) A designation does not prevent mineral exploration pursuant to this act of any area so designated.

(5) The requirements of this section do not apply to lands on which strip- or underground-coal-mining operations are being conducted pursuant to a permit issued under this part or where substantial legal and financial commitments in these operations were in existence prior to January 4, 1977.

(6) This section does not become effective until the secretary of interior has approved the state's permanent regulatory program under Public Law 95-87.

Section 11. Section 82-4-231, MCA, is amended to read:

1 "82-4-231. Submission of and action on reclamation
 2 plan. (1) As rapidly, completely, and effectively as the
 3 most modern technology and the most advanced state of the
 4 art will allow, each operator granted a permit under this
 5 part shall reclaim and revegetate the land affected by his
 6 operation, except that underground tunnels, shafts, or other
 7 subsurface excavations need not be revegetated. Under the
 8 provisions of this part and rules adopted by the board, an
 9 operator shall prepare and carry out a method of operation,
 10 plan of grading, backfilling, highwall reduction,
 11 subsidence stabilization, water control, topsoiling, and a
 12 reclamation plan for the area of land affected by his
 13 operation. In developing a method of operation and plans of
 14 backfilling, subsidence stabilization, water control,
 15 grading, highwall reduction, topsoiling, and reclamation,
 16 all measures shall be taken to eliminate damages to
 17 landowners and members of the public, their real and
 18 personal property, public roads, streams, and all other
 19 public property from soil erosion, subsidence, landslides,
 20 water pollution, and hazards dangerous to life and property.

21 (2) The reclamation plan shall set forth in detail the
 22 manner in which the applicant intends to comply with this
 23 section and 82-4-232 through 82-4-234, as amended, and the
 24 steps to be taken to comply with applicable air and water
 25 quality laws and rules and any applicable health and safety

1 standards. The plan application for permit or major revision
 2 of a permit, which shall contain the reclamation plan, shall
 3 be submitted to the department--and--the--department--shall
 4 notify--the--applicant--by--certified--or--registered--mail--within
 5 120--days--after--receipt--of--the--plan--and--complete--application
 6 if--it--is--or--is--not--acceptable. The department shall notify
 7 various local governmental bodies, planning agencies, sewage
 8 and water treatment authorities, and water companies in the
 9 locality in which the proposed mining will take place of the
 10 application and provide a reasonable time for them to submit
 11 written comments. Any person having an interest which is or
 12 may be adversely affected or the officer or head of any
 13 federal, state, or local governmental agency or authority
 14 shall have the right to file written objections to the
 15 proposed initial or revised application for permit or major
 16 revision within 30 days of the applicant's published notice.
 17 If written objections are filed and an objector requests an
 18 informal conference, the department shall hold an informal
 19 conference in the locality of the proposed operation after
 20 adequate public notice. The department may arrange with the
 21 applicant upon request by any party to the administrative
 22 proceeding for access to the proposed mining area for the
 23 purpose of gathering information relevant to the proceeding.
 24 The department shall notify the applicant by certified or
 25 registered mail within 120 days after receipt of the

1 ~~complete application if it is or is not acceptable.~~ The
 2 department may extend the 120 days an additional 120 days
 3 upon notification of the operator in writing. ~~The department~~
 4 ~~shall make written findings granting or denying the permit~~
 5 ~~or revision application in whole or in part.~~ If the ~~plan~~
 6 application is not acceptable, the department shall set
 7 forth the reasons why ~~the plan~~ it is not acceptable, and it
 8 may propose modifications, delete areas, or reject the
 9 entire ~~plan~~ application. A landowner, operator, or any
 10 person ~~aggrieved by the decision of the department with an~~
 11 ~~interest that is or may be adversely affected~~ may by written
 12 notice request a hearing by the board. ~~The hearing shall be~~
 13 ~~held within 30 days of the request. No person who presided~~
 14 ~~at the informal conference may either preside at the hearing~~
 15 ~~or participate in the decision thereon. For purposes of the~~
 16 ~~hearing, the board may order site inspections of the area~~
 17 ~~pertinent to the application.~~ The board shall notify the
 18 person by certified or registered mail ~~and all other persons~~
 19 ~~by regular mail~~ within 20 days after the hearing of its
 20 decision. Every reclamation plan shall be subject to annual
 21 review and modification.

22 (3) In addition to the method of operation, grading,
 23 backfilling, subsidence stabilization, water control,
 24 highwall reduction, topsoiling, and reclamation requirements
 25 of this part and rules adopted under this part, the

1 operator, consistent with the directives of subsection (1)
 2 of this section, shall:

3 (a) bury under adequate fill all toxic materials,
 4 shale, mineral, or any other material determined by the
 5 department to be acid producing, toxic, undesirable, or
 6 creating a hazard;

7 (b) as directed by rules seal off tunnels, shafts, or
 8 other openings or any breakthrough of water creating a
 9 hazard;

10 (c) impound, drain, or treat all runoff or underground
 11 mine waters so as to reduce soil erosion, damage to grazing
 12 and agricultural lands, and pollution of surface and
 13 subsurface waters;

14 (d) remove or bury all metal, lumber, and other refuse
 15 resulting from the operation;

16 (e) use explosives in connection with the operation
 17 only in accordance with department regulations designed to
 18 minimize noise, damage to adjacent lands, and water
 19 pollution and ensure public safety and for other purposes;

20 (f) adopt measures to prevent land subsidence unless
 21 the board approves a plan for inducing subsidence into an
 22 abandoned operation in a predictable and controlled manner
 23 with measures for grading, topsoiling, and revegetating the
 24 subsided land surface. In order for a controlled subsidence
 25 plan to be approved, the applicant must show that subsidence

will not cause a direct or indirect hazard to any public or private buildings, roads, facilities, or use areas, constitute a hazard to human life or health, or constitute a hazard to domestic livestock or to a viable agricultural operation, or violate any other restrictions the board may consider necessary.

(g) stockpile and protect from erosion all mining and processing wastes until these wastes can be disposed of according to the provisions of this part;

(h) deposit as much stockpiled waste material as possible back into the mine voids upon abandonment in such manner as to prevent or minimize land subsidence. The remaining waste material shall be disposed of as provided by this part and the rules of the board.

(i) seal all portals, entryways, drifts, shafts, or other openings between the surface and underground mine workings upon abandonment when no longer needed;

(j) to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values and achieve enhancement of such resources where practicable;

(k) minimize the disturbances to the prevailing hydrologic balance at the mine site and in associated offsite areas and to the quality and quantity of water in

surface-water and ground-water systems both during and after strip- or underground-mining operations and during reclamation by:

(i) avoiding acid or other toxic mine drainage by such measures as, but not limited to:

(A) preventing or removing water from contact with toxic-producing deposits;

(B) treating drainage to reduce toxic content which adversely affects downstream water upon being released to water courses;

(C) casing, sealing, or otherwise managing boreholes, shafts, and wells and keeping acid or other toxic drainage from entering ground and surface waters;

(iii) (A) conducting strip- or underground-mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area but in no event shall contributions be in excess of requirements set by applicable state or federal law;

(B) constructing any siltation structures pursuant to (iii)(A) of this subsection prior to commencement of strip- or underground-mining operations, such structures to be certified by a qualified registered engineer to be constructed as designed and as approved in the reclamation

1 plan:

2 (iii) cleaning out and removing temporary or large
3 settling ponds or other siltation structures from drainways
4 after disturbed areas are revegetated and stabilized and
5 depositing the silt and debris at a site and in a manner
6 approved by the department;

7 (iv) restoring recharge capacity of the mined area to
8 approximate premining conditions;

9 (v) avoiding channel deepening or enlargement in
10 operations requiring the discharge of water from mines;

11 (vi) preserving throughout the mining and reclamation
12 process the essential hydrologic functions of alluvial
13 valley floors in the arid and semiarid areas of the country;
14 and

15 (vii) such other actions as the department may
16 prescribe;

17 (1) conduct strip- or underground-mine operations in
18 accordance with the approved coal conservation plan;

19 (m) stabilize and protect all surface areas, including
20 spoil piles, to effectively control air pollution;

21 (n) seal all auger holes with an impervious and
22 noncombustible material in order to prevent drainage except
23 where the department determines that the resulting
24 impoundment of water in such auger holes may create a hazard
25 to the environment or the public health and safety;

1 (o) develop contingency plans to prevent sustained
2 combustion;

3 (p) refrain from construction of roads or other access
4 ways up a streambed or drainage channel or in such proximity
5 to such channel so as to seriously alter the normal flow of
6 water;

7 (q) meet such other criteria as are necessary to
8 achieve reclamation in accordance with the purposes of this
9 part, taking into consideration the physical,
10 climatological, and other characteristics of the site;

11 (r) with regard to underground mines, eliminate fire
12 hazards and otherwise eliminate conditions which constitute
13 a hazard to health and safety of the public;

14 (s) locate openings for all new drift mines working
15 acid-producing or iron-producing coal seams in such a manner
16 as to prevent a gravity discharge of water from the mine.

17 (+) An operator may not throw, dump, pile, or permit
18 the dumping, piling, or throwing or otherwise placing any
19 overburden, stones, rocks, mineral, earth, soil, dirt,
20 debris, trees, wood, logs, or any other materials or
21 substances of any kind or nature beyond or outside of the
22 area of land which is under permit and for which a bond has
23 been posted under 82-4-223, as amended, or place the
24 materials described in this section in such a way that
25 normal erosion or slides brought about by natural physical

1 causes will permit the materials to go beyond or outside of
2 that area of land. An operator shall conduct the strip- or
3 underground-mining operation in such a manner as to protect
4 areas outside the permit area."

5 Section 12. Section 82-4-232, MCA, is amended to read:

6 "82-4-232. Area mining required -- bond -- alternative
7 plan. (1) Area strip mining, a method of operation which
8 does not produce a bench or fill bench, is required where
9 strip mining is proposed. All highwalls must be reduced and
10 the steepest slope of the reduced highwall shall be no
11 greater than 20 degrees from the horizontal. Highwall
12 reduction shall be commenced at or beyond the top of the
13 highwall and sloped to the graded spoil bank. Reduction,
14 backfilling, and grading shall eliminate all highwalls and
15 spoil peaks. The area of land affected shall be restored to
16 the approximate original contour of the land. When directed
17 by the department, the operator shall construct in the final
18 grading such diversion ditches, depressions, or terraces as
19 will accumulate or control the water runoff. Additional
20 restoration work may be required by the department according
21 to rules adopted by the board.

22 (2) In addition to the backfilling and grading
23 requirements, the operator's method of operation on steep
24 slopes may be regulated and controlled according to rules
25 adopted by the board. These rules may require any measure

1 whatsoever to accomplish the purpose of this part.

2 (3) For prime farmlands, the board shall establish by
3 rule specifications for soil removal, storage, replacement,
4 and reconstruction, and the operator shall as a minimum be
5 required to:

6 (a) segregate the A horizon of the natural soil,
7 except where it can be shown that other available soil
8 materials will create a final soil having a greater
9 productive capacity; and if not utilized immediately,
10 stockpile this material separately from other spoil, and
11 provide needed protection from wind and water erosion or
12 contamination by other acid or toxic material;

13 (b) segregate the B horizon of the natural soil, or
14 underlying C horizon or other strata, or a combination of
15 such horizons or other strata that are shown to be both
16 texturally and chemically suitable for plant growth and that
17 can be shown to be equally or more favorable for plant
18 growth than the B horizon in sufficient quantities to create
19 in the regraded final soil a root zone of comparable depth
20 and quality to that which existed in the natural soil; and
21 if not utilized immediately stockpile this material
22 separately from other spoil, and provide needed protection
23 from wind and water erosion or contamination by acid or
24 toxic material;

25 (c) replace and regrade the root zone material

described in (b) above with proper compaction and uniform depth over the regraded spoil material; and

(d) redistribute and grade in a uniform manner the surface soil horizon described in (a) above.

~~(3)~~(4) All available topsoil shall be removed in a separate layer, guarded from erosion and pollution, kept in such a condition that it can sustain vegetation of at least the quality and variety it sustained prior to removal, and returned as the top layer after the operation has been backfilled and graded, provided that the operator shall accord substantially the same treatment to any subsurface deposit of material that is capable, as determined by the department, of supporting surface vegetation virtually as well as the present topsoil. After the operation has been backfilled and graded, the topsoil or the best available subsurface deposit of material which is best able to support vegetation shall be returned as the top layer.

~~(4)~~(5) As determined by rules of the board, time limits shall be established requiring backfilling, grading, subsidence stabilization, water control, highwall reduction, topsoiling, planting, and revegetation to be kept current. All backfilling, subsidence stabilization, sealing, grading, and topsoiling shall be completed before necessary equipment is moved from the operation.

~~(5)~~(6) When the backfilling, grading, subsidence

stabilization, water controls, and topsoiling have been completed and approved by the department, the commissioner, after public notice and opportunity for hearing, may release so much of the bond which was filed for that portion of the operation as the commissioner may determine, provided that no less than \$200 per acre shall be retained by the department until such time as the planting and revegetation is done according to law and approved by the department, at which time the commissioner shall release the bond in the remaining amount. No part of the bond or deposit may be released under this subsection so long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by this part or until soil productivity for prime farmlands has returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to this part. Where a silt dam is to be retained as a permanent impoundment, the portion of bond pertaining thereto may be released under this subsection so long as provisions for sound future maintenance by the operator or the landowner have been made with the department. Any person with a valid legal interest that might be adversely affected by release of the bond or the responsible head of any federal, state,

1 or local governmental agency that has jurisdiction by law or
 2 special expertise with respect to any environmental, social,
 3 or economic impact involved in the operation or is
 4 authorized to develop and enforce environmental standards
 5 with respect to such operations shall have the right to file
 6 written objections to the proposed release with the
 7 department within 30 days of public notice. The hearing
 8 shall be held at the state capital or, if an objector so
 9 requests, in the locality of the proposed bond release. For
 10 purposes of the hearing, the board may order site
 11 inspections of the area for which bond release is sought and
 12 other strip- or underground-mining operations carried on by
 13 the applicant in the area. Without prejudice to the rights
 14 of the objectors or the applicant or to the responsibilities
 15 of the department, the department may establish an informal
 16 conference to resolve written objections.

17 ~~(6)(7)~~ An operator may propose alternative plans other
 18 than backfilling, grading, highwall reduction, or topsoiling
 19 if the restoration will be consistent with the purpose of
 20 this part. These plans shall be submitted to the department,
 21 and after consultation with the landowner, if the plans are
 22 approved by the board and complied with within the time
 23 limits as may be determined by the board as being reasonable
 24 for carrying out the plans, the backfilling, grading,
 25 highwall reduction, or topsoiling requirements of this part

1 may be modified by the board. An operator who proposes
 2 alternative plans that will affect an existing permit shall
 3 comply with the notice requirement of 82-4-222(1)(k)."

4 Section 13. Section 82-4-235, MCA, is amended to read:
 5 "82-4-235. Planting report. (1) At least 60 days prior
 6 to the date of each permit expiration, the operator shall
 7 file a planting report with the department on a form to be
 8 prescribed and furnished by the department, giving the
 9 following information:

10 (a) identification of the operation;
 11 (b) the type of planting or seeding, including
 12 mixtures and amounts;
 13 (c) the date of planting or seedings;
 14 (d) the area of land planted;
 15 (e) any other relevant information the department
 16 requires.

17 (2) All planting reports shall be certified by the
 18 operator.

19 (3) Inspection and evaluation for permanent diverse
 20 vegetative cover shall be made as soon as it is possible to
 21 determine if a satisfactory stand has been established. If
 22 the department determines that a satisfactory permanent
 23 diverse vegetative cover has been established, it shall
 24 release the remaining bond held on the area reclaimed after
 25 public notice and an opportunity for a hearing as provided

in 82-4-232(6). In no event shall such remaining bond be released prior to a period of 5 10 years from--the--initial planting--provided--for--in--82-4-233 after the last year of augmented seeding, fertilizing, irrigation, or other work required under this part for those operations or portions of operations that were seeded after February 2, 1978, or prior to a period of 5 years after initial planting for all exploration activities and all other operations."

Section 14. Section 82-4-239, MCA, is amended to read:

"82-4-239. Reclamation by board. (1) The board may have reclamation work done by its own employees or by employees of other governmental agencies, soil conservation districts, or through contracts with qualified persons. The board may construct, operate, and maintain plants for the control and treatment of water pollution resulting from mine drainage.

(2) Any funds or any public works programs available to the board shall be used and expended to reclaim and rehabilitate lands that have been subjected to strip mining or underground mining that have not been reclaimed and rehabilitated in accordance with the standards of this part. The board shall cooperate with federal, state, and private agencies to engage in cooperative projects under this section.

(3) Agents, employees, or contractors of the

department may enter upon any land for the purpose of conducting studies or exploratory work to determine whether such land has been strip- or underground-mined and not reclaimed and rehabilitated in accordance with the requirements of this part and to determine the feasibility of restoration, reclamation, abatement, control, or prevention of any adverse effects of past coal-mining practices. Upon request of the commissioner, the attorney general shall bring an injunctive action to restrain any interference with the exercise of the right to enter and inspect granted in this subsection.

(4) If the department makes a finding of fact that:

(a) land or water resources have been adversely affected by past coal-mining practices; and

(b) the adverse effects are at a stage where in the public interest action to restore, reclaim, abate, control, or prevent should be taken; and

(c) the owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices are not known or readily available; or the owners will not give permission for the department or its agents, employees, or contractors to enter upon such property to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices;

1 then agents, employees, or contractors of the
 2 department, after giving notice by mail to the owner, if
 3 known, or, if not known, by posting notice upon the premises
 4 and advertising in a newspaper of general circulation in the
 5 county in which the land lies, may enter upon property
 6 adversely affected by past coal-mining practices and any
 7 other property necessary for access to such mineral property
 8 to do all things necessary or expedient to restore, reclaim,
 9 abate, control, or prevent the adverse effects of past
 10 coal-mining practices. This act is not an act of
 11 condemnation of property or of trespass but rather an
 12 exercise of the power granted by sections 1 and 2, Article
 13 IX of the Montana constitution.

14 (5) (a) Within 6 months after the completion of
 15 projects to restore, reclaim, abate, control, or prevent
 16 adverse effects of past coal-mining practices on privately
 17 owned land, the department shall itemize the money so
 18 expended and may file a statement thereof in the office of
 19 the clerk and recorder of the county in which the land lies,
 20 together with a notarized appraisal by an independent
 21 appraiser of the value of the land before the restoration,
 22 reclamation, abatement, control, or prevention of adverse
 23 effects of past coal-mining practices if the money so
 24 expended shall result in a significant increase in property
 25 value. Such statement constitutes a lien upon the land. The

1 lien may not exceed the amount determined by the appraisal
 2 to be the increase in the market value of the land as a
 3 result of the restoration, reclamation, abatement, control,
 4 or prevention of the adverse effects of past coal-mining
 5 practices. No lien may be filed against the property of any
 6 person, in accordance with this subsection, who owned the
 7 surface prior to May 2, 1977, and who neither consented to
 8 nor participated in nor exercised control over the mining
 9 operation which necessitated the reclamation performed under
 10 this part.

11 (b) The landowner may petition within 60 days of the
 12 filing of the lien to determine the increase in the market
 13 value of the land as a result of the restoration,
 14 reclamation, abatement, control, or prevention of the
 15 adverse effects of past coal-mining practices. The amount
 16 reported to be the increase in value of the premises
 17 constitutes the amount of the lien and shall be recorded
 18 with the statement herein provided. Any party aggrieved by
 19 the decision may appeal as provided by law.

20 (c) The lien provided in this section shall be
 21 recorded at the office of the county clerk and recorder. The
 22 statement constitutes a lien upon the land as of the date of
 23 the expenditure of the money and has priority as a lien
 24 second only to the lien of real estate taxes imposed upon
 25 the land.

1 (6) The board may acquire the necessary property by
 2 gift or purchase or, if the property cannot be acquired by
 3 gift or purchase at a reasonable cost, proceedings may be
 4 instituted in the manner provided in Title 70, chapter 30,
 5 part 1, against all nonaccepting landholders if:

6 (a) the property is necessary for successful
 7 reclamation;

8 (b) the acquired land after restoration, reclamation,
 9 abatement, control, or prevention of the adverse effects of
 10 past coal-mining practices will serve recreation and
 11 historic purposes, conservation and reclamation purposes, or
 12 provide open space benefits; and

13 (c) permanent facilities such as treatment plants or
 14 relocated stream channels will be constructed on the land
 15 for the restoration, reclamation, abatement, control, or
 16 prevention of the adverse effects of past strip- or
 17 underground-coal-mining practices; or acquisition of coal
 18 refuse disposal sites and all coal refuse thereon will serve
 19 the purposes of [this part] in that public ownership is
 20 desirable to meet emergency situations and prevent
 21 recurrences of the adverse effects of past coal-mining
 22 practices."

23 Section 15. Section 82-4-251, MCA, is amended to read:

24 "82-4-251. Noncompliance -- suspension of permits. (1)
 25 ~~if--any--of-the-requirements-of-this-part-or-rules-or-orders~~

1 ~~of-the-department-and-the-board-have-not-been-complied-with~~
 2 ~~within-the-time-limits-set-by-the-department-or-the-board-or~~
 3 ~~by--this--part--the--department--shall--serve--a--notice-of~~
 4 ~~noncompliance-on-the-operator-ory-where-found-necessary--the~~
 5 ~~commissioner-shall-order-the-suspension--of--a--permits--The~~
 6 ~~notice-or-order-shall-be-handed-to-the-operator-in-person-or~~
 7 ~~served-by-certified-or--registered--mail-addressed-to-the~~
 8 ~~permanent-address-shown-on-the-application-for-a-permits--The~~
 9 ~~notice-of-noncompliance-or-order-of-suspension-shall-specify~~
 10 ~~in-what-respects-the-operator-has-failed-to-comply-with-this~~
 11 ~~part-or-the-rules-or-orders-of-the-department-and-the-boards~~
 12 ~~if-the-operator-has-not-complied-with--the--requirement--set~~
 13 ~~forth--in-the-notice-of-noncompliance-or-order-of-suspension~~
 14 ~~within-time-limits-set-therein--the-permit-may-be-revoked-by~~
 15 ~~order-of-the-board-and-the-performance-bond-forfeited-to-the~~
 16 ~~department. The commissioner or an authorized representative~~
 17 ~~of the department shall, if he determines on the basis of an~~
 18 ~~inspection that any condition or practices exist or that the~~
 19 ~~permittee is in violation of any requirement of this part or~~
 20 ~~any permit condition required by the part that creates an~~
 21 ~~imminent danger to the health or safety of the public or is~~
 22 ~~causing or can reasonably be expected to cause significant~~
 23 ~~and imminent environmental harm to land, air, or water~~
 24 ~~resources, immediately order cessation of strip- or~~
 25 ~~underground-mining and reclamation operations or the portion~~

thereof relevant to the condition, practice, or violation. The cessation order remains in effect until the commissioner or his authorized representative determines that the condition, practice, or violation has been abated or until modified, vacated, or terminated by the commissioner or his authorized representative pursuant to subsection (5). If the commissioner or his authorized representative finds that the ordered cessation of strip- or underground-coal-mining and reclamation operations, or any portion thereof, will not completely abate the imminent danger to the health or safety of the public or the significant and imminent environmental harm to land, air, or water resources, he shall in addition to the cessation order impose affirmative obligations on the operator requiring him to take whatever steps the commissioner or his authorized representative considers necessary to abate the imminent danger or the significant environmental harm.

(2) When, on the basis of an inspection, the department determines that any permittee is in violation of any requirement of this part or any permit condition required by this part which does not create an imminent danger to the health or safety of the public or cannot be reasonably expected to cause significant and imminent environmental harm to land, air, or water resources, the commissioner or authorized representative shall issue a

notice to the permittee or his agent fixing a reasonable time not exceeding 90 days for the abatement of the violation and providing opportunity for public hearing. If, upon expiration of the period of time as originally fixed or subsequently extended, for good cause shown and upon the written finding of the commissioner or his authorized representative, the commissioner or his authorized representative finds that the violation has not been abated, he shall immediately order a cessation of strip- or underground-coal-mining and reclamation operations or the portion thereof relevant to the violation. Such cessation order remains in effect until the commissioner or his authorized representative determines that the violation has been abated or until modified, vacated, or terminated by the commissioner or his authorized representative pursuant to subsection (5). In the order of cessation issued under this subsection, the commissioner shall determine the steps necessary to abate the violation in the most expeditious manner possible and shall include the necessary measures in the order.

(3) When, on the basis of an inspection, the commissioner or his authorized representative determines that a pattern of violations of any requirements of this part or any permit conditions required by this part exists or has existed and if the commissioner or his authorized

representative also finds that such violations are caused by the unwarranted failure of the permittee to comply with any requirements of this part or any permit conditions or that such violations are willfully caused by the permittee, the commissioner or his authorized representative shall forthwith issue an order to the permittee to show cause as to why the permit should not be suspended or revoked and shall provide opportunity for a public hearing. If a hearing is requested the commissioner shall inform all interested parties of the time and place of the hearing. Upon the permittee's failure to show cause as to why the permit should not be suspended or revoked, the commissioner or his authorized representative shall forthwith suspend or the board shall revoke the permit. When a permit has been revoked, the board may order the performance bond forfeited.

†2†(4) Any additional permits held by an operator whose mining permit has been revoked shall be suspended and the operator is not eligible to receive another permit or to have the suspended permits reinstated until he has complied with all the requirements of this part in respect to former permits issued him. An operator who has forfeited a bond is not eligible to receive another permit unless the land for which the bond was forfeited has been reclaimed without cost to the state or the operator has paid into the reclamation account a sum together with the value of the bond the board

finds adequate to reclaim the lands. The department may not issue any additional permits to an operator who has repeatedly been in noncompliance or violation of this part.

(5) Notices and orders issued pursuant to this section shall set forth with reasonable specificity the nature of the violation and the remedial action required, the period of time established for abatement, and a reasonable description of the portion of the strip- or underground-coal-mining and reclamation operation to which the notice or order applies. Each notice or order issued under this section shall be given promptly to the permittee or his agent by the department or the commissioner or his authorized representative who issues the notice or order. All such notices and orders must be in writing and be signed by the authorized representatives. Any notice or order issued pursuant to this section may be modified, vacated, or terminated by the commissioner or his authorized representative, provided that any notice or order issued pursuant to this section that requires cessation of mining by the operator expires within 30 days of actual notice to the operator unless a public hearing is held at the site or within such reasonable proximity to the site that any viewings of the site can be conducted during the course of public hearing.

(6) An operator issued a notice or an order of

1 abatement pursuant to this section or any person having an
 2 interest that is or may be adversely affected by an order or
 3 by modification, vacation, or termination of an order, may
 4 apply to the department for review of that order within 30
 5 days of its issuance or within 30 days of its modification,
 6 vacation, or termination. Upon receipt of the applications,
 7 the department shall make an investigation. The
 8 investigation shall provide an opportunity for public
 9 hearing at the request of the applicant or the person having
 10 an interest who is or may be adversely affected, to enable
 11 the applicant or the person to present information relating
 12 to the issuance and continuance of the notice, order, or the
 13 modification, vacation, or termination of it. The filing of
 14 an application for review under this subsection may not
 15 operate as a stay of any order or notice. The department
 16 shall make findings of fact and issue a written decision
 17 incorporating an order vacating, affirming, modifying, or
 18 terminating the order.

19 (7) Whenever an order is issued under this section or
 20 as the result of any administrative proceeding under [this
 21 part], at the request of any person a sum equal to the
 22 aggregate amount of all costs, expenses, and attorney fees
 23 as determined by the department to have been reasonably
 24 incurred by such person for or in connection with his
 25 participation in such proceedings, including any judicial

1 review of agency actions, may be assessed against either
 2 party as the court, resulting from judicial review, or the
 3 department, resulting from administrative proceedings,
 4 considers proper.

5 (8) In order to protect the stability of the land, the
 6 commissioner or his authorized representative shall order
 7 cessation of underground coal mining under urbanized areas,
 8 cities, towns, and communities and adjacent to industrial or
 9 commercial buildings, major impoundments, or permanent
 10 streams if he finds imminent danger to inhabitants of the
 11 urbanized areas, cities, towns, and communities."

12 Section 16. Section 82-4-252, MCA, is amended to read:
 13 "82-4-252. Mandamus. (1) A resident of this state,
 14 with knowledge that a requirement of this part or a rule
 15 adopted under this part is not being enforced or implemented
 16 by a public officer or employee whose duty it is to enforce
 17 or implement the requirement or rule, may bring the failure
 18 to enforce to the attention of the public officer or
 19 employee by a written statement under oath that shall state
 20 the specific facts of the failure to enforce the requirement
 21 or rule. Knowingly making false statements or charges in
 22 the affidavit subjects the affiant to penalties prescribed
 23 under the law of perjury.

24 (2) If the public officer or employee neglects or
 25 refuses for an unreasonable time after receipt of the

statement to enforce the requirement or rule, the resident may bring an action of mandamus in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or in the district court of the county in which the land is located. The court, if it finds that a requirement of this part or a rule adopted under this part is not being enforced, shall order the public officer or employee whose duty it is to enforce the requirement or rule to perform his duties. If he fails to do so, the public officer or employee shall be held in contempt of court and is subject to the penalties provided by law.

(3) Any person having an interest that is or may be adversely affected may commence a civil action on his own behalf to compel compliance with this part against any person for the violation of this part or any rule, order, or permit issued hereunder. However, no such action may commence:

(a) prior to 60 days after the plaintiff has given notice in writing to the department and to the alleged violator; or

(b) if the department has commenced and is diligently prosecuting a civil action to require compliance with the provisions of this part in any rule, order, or permit issued hereunder. Any person may intervene as a matter of right in any such civil action. Nothing in this section restricts any

right that any person may have under any statute or common law to seek enforcement of this part or the rules adopted hereunder or to seek any other relief.

(4) Any person who is injured in his person or property through the violation by any operator of any rule, order, or permit issued pursuant to this part may bring an action for damages (including reasonable attorney and expert witness fees) only in the county in which the strip- or underground-coal-mining operation complained of is located. Nothing in this subsection affects the rights established by or limits imposed under chapter 71 of Title 39.

(5) The court, in issuing any final order in any action brought pursuant to subsection (3), may award costs of litigation (including attorney and expert witness fees) to any party whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Montana Rules of Civil Procedure."

Section 17. Section 82-4-254, MCA, is amended to read:

"82-4-254. Violation -- penalty. (1) A person or operator who violates any of the provisions of this part, or rules or orders adopted under this part, or permit, term, or condition, and any director, officer, or agent of a corporation who willfully authorizes, orders, or carries out

1 a violation, shall pay a civil penalty of not less than \$100
 2 or more than ~~\$1,000~~ \$5,000 for the violation and an
 3 additional civil penalty of not less than \$100 or more than
 4 ~~\$1,000~~ \$5,000 for each day during which a violation
 5 continues and may be enjoined from continuing such
 6 violations as hereinafter provided in this section. These
 7 ~~penalties shall be recoverable in any action brought in the~~
 8 ~~name of the state of Montana by the attorney general in the~~
 9 ~~district court of the first judicial district of this state or~~
 10 ~~in and for the county of Lewis and Clark, or in the district~~
 11 ~~court having jurisdiction of the defendant.~~ Any person or
 12 operator who fails to correct a violation within the period
 13 permitted by law, rule of the board or department, or order
 14 of the commissioner shall be assessed a penalty of not less
 15 than \$750 for each day during which such failure or
 16 violation continues. The period permitted for correction of
 17 a violation shall not, in the case of any review proceeding
 18 under 82-4-251(6), end until entry of a final order
 19 suspending the abatement requirements or until entry of an
 20 order of court ordering suspension of the abatement
 21 requirements.

22 (2) ~~The attorney general shall, upon the request of~~
 23 ~~the commissioner, sue for the recovery of the penalties~~
 24 ~~provided for in this section and bring an action for a~~
 25 ~~restraining order, temporary or permanent injunction,~~

1 ~~against an operator or other person violating or threatening~~
 2 ~~to violate an order adopted under this part. The department~~
 3 ~~shall notify the person or operator of the violation. The~~
 4 ~~person or operator shall by filing a written request within~~
 5 ~~20 days of receipt of the notice of violation be entitled to~~
 6 ~~a hearing on the issues of whether the alleged violation has~~
 7 ~~occurred and whether the penalty proposed to be assessed is~~
 8 ~~proper. The department shall issue a statement of proposed~~
 9 ~~penalty no more than 10 days after notice of violation.~~
 10 ~~After the hearing or after the time for requesting a hearing~~
 11 ~~has expired, the board shall make findings of fact and shall~~
 12 ~~issue a written decision as to the occurrence of the~~
 13 ~~violation and the amount of penalty warranted and shall~~
 14 ~~order the payment of a penalty in that amount. The person or~~
 15 ~~operator shall remit the amount of the penalty within 30~~
 16 ~~days of the order. If the person or operator wishes to~~
 17 ~~obtain judicial review of the assessment, he shall submit~~
 18 ~~with the penalty a statement that the penalty is being paid~~
 19 ~~under protest and the department shall hold the payment in~~
 20 ~~escrow until judicial review is complete. Any person or~~
 21 ~~operator who fails to request and submit testimony at the~~
 22 ~~hearing provided for in this subsection or who fails to pay~~
 23 ~~the assessed penalty under protest within 30 days of the~~
 24 ~~order assessing the penalty forfeits his right to seek~~
 25 ~~judicial review of the violation or penalty determinations.~~

These penalties are recoverable in any action brought in the name of the state of Montana by the attorney general in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or the district having jurisdiction over the defendant.

(3) A person who willfully violates any of the provisions of this part or any determination or order adopted under this part which has become final is guilty of a misdemeanor and shall be fined not less than \$500 and not more than \$5,000. Each day on which a violation occurs constitutes a separate offense. The attorney general shall, upon request of the commissioner, sue for the recovery of the penalties provided for in this section and bring an action for a restraining order or temporary or permanent injunction against an operator or other person who:

(a) violates, threatens to violate, or fails or refuses to comply with any order or decision issued under this part;

(b) interferes with, hinders, or delays the department in carrying out the provisions of the part;

(c) refuses to admit an authorized representative of the department to the permit area;

(d) refuses to permit inspection of the permit area by an authorized representative of the department;

(e) refuses to furnish any information or report

requested by the department in furtherance of the provisions of this part;

(f) refuses to permit access to, and copying of, such records as the department determines to be necessary in carrying out the provisions of this part.

(4) Any relief granted by a court under subsection (3)(a) continues in effect until the completion or final termination of all proceedings for review of such under this part unless, prior thereto, the district court granting the relief sets it aside or modifies it.

(5) A person who violates any of the provisions of this part, any determination or order adopted under this part, or who willfully violates any permit condition issued under this part is guilty of a misdemeanor and shall be fined not less than \$500 and not more than \$10,000 or imprisoned for not more than 1 year, or both, each day on which the violation occurs constitutes a separate offense.

(6) Any person who knowingly makes any false statement, representation, or certification, or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this part shall, upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than 1 year, or both.

~~(7) Any person who except as permitted by law willfully resists, prevents, impedes, or interferes with the department or its agents in the performance of duties pursuant to this part shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than 1 year, or both.~~

~~(8) No employee of the department performing any function or duty under this part shall have a direct or indirect financial interest in any strip- or underground-coal-mining operation. Whoever knowingly violates the provisions of this subsection shall, upon conviction, be punished by a fine of not more than \$2,500 or by imprisonment of not more than 1 year, or both."~~

Section 18. Section 70-30-102, MCA, is amended to read:

"70-30-102. Public uses enumerated. Subject to the provisions of this chapter, the right of eminent domain may be exercised in behalf of the following public uses:

(1) all public uses authorized by the government of the United States;

(2) public buildings and grounds for the use of the state and all other public uses authorized by the legislature of the state;

(3) public buildings and grounds for the use of any county, city or town, or school district; canals, aqueducts,

flumes, ditches, or pipes conducting water, heat, or gas for the use of the inhabitants of any county, city, or town; raising the banks of streams, removing obstructions therefrom, and widening, deepening, or straightening their channels; roads, streets, and alleys and all other public uses for the benefit of any county, city, or town or the inhabitants thereof, which may be authorized by the legislature; but the mode of apportioning and collecting the costs of such improvements shall be such as may be provided in the statutes or ordinances by which the same may be authorized;

(4) wharves, docks, piers, chutes, booms, ferries, bridges, of all kinds, private roads, plank and turnpike roads, railroads, canals, ditches, flumes, aqueducts, and pipes for public transportation, supplying mines, mills, and smelters for the reduction of ores and farming neighborhoods with water and drainage and reclaiming lands and for floating logs and lumber on streams not navigable and sites for reservoirs necessary for collecting and storing water. However, such reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.

(5) roads, tunnels, ditches, flumes, pipes, and dumping places for working mines, mills, or smelters for the reduction of ores; also outlets, natural or otherwise, for

1 the flow, deposit, or conduct of tailings or refuse matter
 2 from mines, mills, and smelters for the reduction of ores;
 3 also an occupancy in common by the owners or the possessors
 4 of different mines of any place for the flow, deposit, or
 5 conduct of tailings or refuse matter from their several
 6 mines, mills, or smelters for reduction of ores and sites
 7 for reservoirs necessary for collecting and storing water.
 8 However, such reservoir sites must possess a public use
 9 demonstrable to the district court as the highest and best
 10 use of the land.

11 (6) private roads leading from highways to residences
 12 or farms;

13 (7) telephone or electric light lines;

14 (8) telegraph lines;

15 (9) sewerage of any city, county, or town or any
 16 subdivision thereof, whether incorporated or unincorporated,
 17 or of any settlement consisting of not less than 10 families
 18 or of any public buildings belonging to the state or to any
 19 college or university;

20 (10) tramway lines;

21 (11) electric power lines;

22 (12) logging railways;

23 (13) temporary logging roads and banking grounds for
 24 the transportation of logs and timber products to public
 25 streams, lakes, mills, railroads, or highways for such time

1 as the court or judge may determine; provided, the grounds
 2 of state institutions be excepted;

3 (14) underground reservoirs suitable for storage of
 4 natural gas;

5 (15) to mine and extract ores, metals, or minerals
 6 owned by the plaintiff located beneath or upon the surface
 7 of property where the title to said surface vests in others.
 8 However, the use of the surface for strip mining or open pit
 9 mining of coal (i.e., any mining method or process in which
 10 the strata or overburden is removed or displaced in order to
 11 extract the coal) is not a public use, and eminent domain
 12 may not be exercised for this purpose;

13 ~~(16) to restore and reclaim lands strip- or~~
 14 ~~underground-mined for coal and not reclaimed in accordance~~
 15 ~~with Title 82, chapter 4, part 2, and to abate or control~~
 16 ~~adverse affects of strip or underground mining on those~~
 17 ~~lands."~~

18 NEW SECTION. Section 19. Applicability. Within 2
 19 months of the secretary of interior's approval of the
 20 state's permanent regulatory program pursuant to section 503
 21 of Public Law 95-87, as amended, each operator shall submit
 22 to the department a permit revision application to bring its
 23 permit into compliance with this act. The burden shall be on
 24 the applicant to demonstrate that the application complies
 25 with all the requirements of this act. The department shall

1 make a written finding granting or denying the application
 2 within 5 months of its submittal. Eight months after the
 3 secretary of interior's approval of the state's permanent
 4 regulatory program, no operator may conduct strip- or
 5 underground-mining operations unless the operator's permit
 6 has been revised to conform to the requirements of this act
 7 and approved by the department. Eight months after the
 8 secretary of interior's approval of the state's regulatory
 9 program, all strip- or underground-mining operations must be
 10 conducted in accordance with Title 82, chapter 2, part 4, as
 11 amended by this act.

12 Section 20. Severability. If a part of this act is
 13 invalid, all valid parts that are severable from the invalid
 14 part remain in effect. If a part of this act is invalid in
 15 one or more of its applications, the part remains in effect
 16 in all valid applications that are severable from the
 17 invalid applications.

18 Section 21. Repealer. Sections 82-3-101 through
 19 82-3-110, MCA, are repealed.

-End-

Mr. Pat Smith, Northern Plains Resource Council, also spoke in opposition to SB 464 and submitted a written statement (see attachment).

Representative Willie Day, District 54, also spoke in opposition to SB 464. He said the House of Representatives is also concerned about this area and has a bill in the Select Water Committee which he feels would address this problem better.

Senator Galt made a brief closing statement and Chairman Roskie opened the hearing to questions from the Committee. Several questions were addressed to Mr. Ted Doney about the present operation of the water reservation system.

DISPOSITION OF SB 464: Senator Manley moved that SB 464 receive a DO PASS recommendation. Senator Brown made a substitute motion that SB 464 receive a DO NOT PASS recommendation and stated that he felt this bill was premature. There was further discussion and then Chairman Roskie called for a roll call vote on Senator Brown's motion. The motion failed (see attachment). Chairman Roskie then called for a roll call vote on Senator Manley's motion that SB 464 receive a DO PASS recommendation. The motion carried (see attachment).

The Committee then recessed briefly while those visitors only interested in SB 464 left the committee room.

CONSIDERATION OF SB 515: "An act to make only those amendments necessary to bring the Montana strip and underground mine reclamation act into compliance with public law 95-87, the surface mining control and reclamation act of 1977; to repeal the strip-mined coal conservation act; amending sections 70-30-102, 82-4-202 through 82-4-205, 82-4-221 through 82-4-223, 82-4-225, 82-4-227, 82-4-228, 82-4-231, 82-4-232, 82-4-235, 82-4-239, 82-4-251, 82-4-252, 82-4-254; and repealing sections 82-3-101 through 82-3-110, MCA."

Chairman Roskie called on Senator Carroll Graham, District 29, to explain SB 515 to the Committee. Senator Graham submitted his comments in written form (see attachment). Senator Graham also proposed some amendments to SB 515 (see attachment) which would further clarify that the major provisions apply to coal mining only and not to uranium mining.

Chairman Roskie then called for any other proponents to SB 515. Mr. Leo Berry, Department of State Lands, stated that they support SB 515. Mr. Jim Mockler, Montana Coal Council, stated that both he and Mr. Berry assisted in working on this bill and he had some amendments to propose to the Committee for their consideration (see attachment).

Chairman Roskie called for any opponents to SB 515 and, hearing none, opened the hearing to questions from the Committee. There

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February 19, 1979
Page 4

was some discussion about the amendments proposed by Senator Graham and by Mr. Mockler.

DISPOSITION OF SB 515: Senator Brown moved the acceptance of all amendments. The motion carried unanimously. Senator Dover then moved that SB 515 receive a DO PASS as Amended recommendation. The motion carried unanimously.

Senator Jergeson then requested the disposition of SB 478 as he would have to leave the hearing to attend a Joint Rules Meeting. Chairman Roskie reread the amendments adopted in the meeting on February 16. Senator Jergeson then explained the amendments to the members who had not been present on Friday.

DISPOSITION OF SB 478: Senator Jergeson moved that SB 478 receive a DO PASS as Amended recommendation. The motion failed. Senator Dover moved that SB 478 receive a DO NOT PASS as Amended recommendation and reverse the vote from Senator Jergeson's motion. The motion carried.

CONSIDERATION OF SB 514: "An act to generally revise the Montana Major Facility Siting Act by amending sections 75-20-104, 75-20-211, 75-20-213, 75-20-215, 75-20-216, 75-20-218 through 75-20-220, 75-20-304, 75-20-501, and 75-20-503, MCA; also amending section 75-20-1102, MCA; and repealing sections 75-20-221, 75-20-222, 75-20-301, and 75-20-303, MCA."

Chairman Roskie turned the chair over to Vice-Chairman Harold Dover while he presented his bill to the Committee. Senator Roskie, District 21, stated that SB 514 would bring the Montana Facility Siting Act into a more workable operation so that we can all get on with getting the job done. Senator Roskie summarized some of the areas SB 514 addresses. He then submitted the testimony of Mr. Ward Shanahan, a proponent to SB 514, who was unable to attend the hearing (see attachment).

Senator Roskie then called on Mr. John Ross, an attorney with the Montana Power Company, who further highlighted the changes proposed by SB 514. Mr. Ross submitted his comments in written form (see attachment).

Vice-Chairman Dover called for any other proponents to SB 514. Mr. Ronald Waterman, Dreyer Brothers Inc., stated that he supported SB 514. Mr. Gene Phillips, Pacific Power and Light Company, said he was also in favor of SB 514. Mr. Jim Mockler, Montana Coal Council, also spoke in support of SB 514. Ms. Janelle Fallan, Montana Chamber of Commerce was also in favor of SB 514.

Vice-Chairman Dover then called for any opponents to SB 514. Mr. Clancy Gordon spoke in opposition to SB 514 and submitted

ROLL CALL

Natural Resources COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
ROSKIE, George F., Chairman	✓		
DOVER, Harold L., Vice-Chairman	✓		
BROWN, Steve	✓	✗	
ETCHART, Mark	✓	✗	
JERGESON, Greg	✓		
LOCKREM, Lloyd C., Jr.	✓	✗	
LOWE, William R.	✓		
MANLEY, John E.	✓		
STORY, Pete	✓		
THIESSEN, Cornie R.	✓		

Each Day Attach to Minutes.

STANDING COMMITTEE REPORT

February 13, 1979

MR. President

We, your committee on Natural Resources

having had under consideration Senate Bill No. 515

Respectfully report as follows: That Senate introduced bill, be amended as follows: Bill No. 515,

1. Page 14, line 18.

Following: line 17

Strike: "underground-coal-mining"

Insert: "underground-mining"

2. Page 18, line 13.

Following: "of"

Strike: "the"

Insert: "coal"

3. Page 22, line 1.

Following: "a"

Insert: "coal mining"

4. Page 26, line 22.

Following: "a"

Strike: "strip-mining or underground-mining"

Insert: "strip- or underground-coal-mining"

5. Page 27, line 6.

Following: "proposed"

Strike: "surface-coal-mining"

Insert: "strip- or underground-coal-mining"

6. Page 27, line 24.

Following: "conduct"

Strike: "surface-coal-mining"

Insert: "strip- or underground-coal-mining"

7. Page 28, line 7.

Following: "mine"

Insert: "coal"

8. Page 29, lines 11 and 12.

Following: "may" on line 11

Strike: remainder of line 11 through "mining" on line 12

Insert: "strip- or underground-coal-mining"

9. Page 29, line 34.

Following: "No"

Strike: "surface mining"

Insert: "strip-or underground-mining"

10. Page 31, line 7.

Following: "or"

Strike: "underground-mining"

Insert: "underground-coal-mining"

11. Page 31, line 14.

Following: line 13

Strike: "strip-mining or underground-mining"

Insert: "strip-or underground-coal-mining"

12. Page 31, lines 18 and 19.

Following: "a" on line 18

Strike: remainder of lines 18 through "underground-mining"
on line 19

Insert: "strip-or underground-coal-mining"

(Continued)

13. Page 31, line 21.

Following: "or"

Strike: "underground-mining"

Insert: "underground-coal-mining"

14. Page 34, lines 22 through 24.

Strike: subsection (6) in its entirety

15. Page 40, line 2.

Following: "or"

Strike: "underground-mining"

Insert: "underground-coal-mining"

16. Page 44, line 2.

Following: "For"

Insert: "coal mining on"

17. Page 45, line 6.

Following: "pollution,"

Insert: "and"

18. Page 45, lines 8 through 10.

Following: "removal," on line 8

Strike: remainder of line 8 through "graded," on line 10

19. Page 46, line 13.

Following: "for prime farmlands"

Insert: "mined for coal"

20. Page 54, line 25.

Following: line 24

Strike: "underground-mining"

Insert: "underground-coal-mining"

21. Page 55, line 10.

Following: line 9

Strike: "underground-coal-mining"

Insert: "underground-mining"

22. Page 58, line 9.

Following: line 8

Strike: "underground-coal-mining"

Insert: "underground-mining"

23. Page 61, line 1.

Following: "to enforce"

Insert: "or implement"

24. Page 70, line 13.

Following: "Applicability."

Insert: "(1) This act does not become effective until the secretary of interior has conditionally or finally approved the state's permanent regulatory program under Public Law 95-87; however, rules pursuant to this act may be adopted pursuant to Title 2, chapter 4, prior to the effective date of this act and shall become effective only on the effective date of this act.

(2)"

And, as so amended,
DO PASS

SENATE Antislavery COMMITTEE

BILL 47-4

VISITORS' REGISTER

DATE 2/15/70

Please note bill no.

(check one)

SUPPORT | OP: 05

NAME	REPRESENTING	BILL #	SUPPORT	(check one) OP: CS
John E. Brown	myself	464		X
Hal Barker	self	464		X
John Morrison	NWPA	"		✓
Murray D. Greene	myself	464		L
Charles M Rein	Sweet Grass Conservation Dist.	464	✓	
Al Kersich	Myself	"	✓	
Pon Jackson	MACD	464	'	
Bill Jackson	Water-MacD	464	V	
Franklin Crossfield	Self	464	✓	
Ged Green	Self	464	L	
Neil Brattin	Self	464		✓
Leonard R. Sargent	ENR	464		
Charlotte Easter	self	464		✓
Lon Ann Crowley	Self	464 514		X
John Haden	self	514		
Alex Thompson	self	464		✓
Sandy Sargent	self	464		
Donna Casey	Self	464		✓
Maxwell Hall	self	464		
Ted J. Doray	DNRC	464 514		✓
Tom Schneider	PSC Self	514		✓
J. Dowling	Mont. L.R. Com	464 514		
Richard W. Pilant	Self	514 575		
Jim R...	self	464		

BILL _____

VISITORS' REGISTER

DATE _____

Please note bill no.

(check one)

NAME

REPRESENTING

BILL #

SUPPORT

OP

Bob Anderson

DNRC

514

✓

Jim Mockler

Mont Coal Council

514/506
515

✓

L. S. R. 204

Dept of State Lands

515

✓

NAME: Jim Mockler

DATE: 3/19/78

ADDRESS: 2301 Colonial Dr

PHONE: 442-6223

REPRESENTING WHOM? Mont. Coal Council

APPEARING ON WHICH PROPOSAL: 515, 514, 506

DO YOU: SUPPORT? ✓ AMEND? ✓ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Leo Kelly DATE: _____

ADDRESS: _____

PHONE: _____

REPRESENTING WHOM? Department of State Lands

APPEARING ON WHICH PROPOSAL: SB 515

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

March 20, 1979

The House Natural Resources Committee convened on March 20, 1979, at 4:30 p.m., in room 3 of the Capital Annex, with Chairman Sheldon presiding and sixteen members present (excused were Reps. Harper, Huennikens and Quilici) to take executive action on the following bills:

EXECUTIVE SESSION

SENATE BILL 515 Copies of a proposed letter of intent, exhibit 1, were passed to the committee members. This letter was prepared by the researcher, Debbie Schmidt, working with Mr. Leo Berry, State Lands, for the committee. Rep. Johnston moved the letter of intent be accepted. This motion carried with Rep. Cooney voting no and absent same as above. Rep. Johnston then moved the bill as amended by the three State Lands' amendments (exhibit 2) be concurred in. The motion carried. Rep. Quilici had left a vote for the bill as amended; Rep. Huennikens had left a vote against; Rep. Harper, absent. The members present voted unanimously for the bill.

SENATE JOINT RESOLUTION 8 Chairman Sheldon said he had planned to have Vice-Chairman Harper take the chair but he was unable to be present. Passed to the committee members was SJR 8 with the proposed amendments inserted (exhibit 3). Rep. Sheldon said the rereg dam at Libby is part of the larger LAURD project. He said a question is raised if the 250 to 270 million that will be spent is money well spent. He said a court case in Butte found that Congress has never authorized the rereg dam but only the present four generators. He said a court in San Francisco supported that decision. In the meantime Senators Melcher and Baucus and Rep. Williams are investigating the Corps figures. They have asked the GAO to do this and that is where they are now. He said the present Libby Dam is in his opinion a very efficient operation--no problem there. The problem is with the plan to add four more generators and change it to a peaking operation. Is that electricity needed as peaking power versus the present base load and peaking operation? By the 1964 treaty with Canada, Canada can divert 1 1/2 million acre feet per year out of the Kootenai and this would accordingly reduce 18% of water at the Libby Dam. Canada may not do that or it may negotiate with us for some substantial amount of money. It is Canadian water. There is a question of need--there has not been sufficient investigation of the effect of such things as higher electricity rates, etc., on peaks. It is much easier to do something about peaking than base load. Base load is coming up--no question. LAURD is a small project compared to the Colstrip proposed project. He said all he is asking with these amendments is that consideration is taken of the situation and the congressional investigation and see what they find. If they find a positive cost ratio--go ahead with the project; if they don't, Rep. Sheldon said he hoped we would say we don't want it. If we want a lid on federal budgets, we have to look at some of the spending.

Rep. Johnston questioned how come Senator Melcher at one time said the rereg dam was authorized and now says it isn't. He said the main dam was designed for four more generators and quite a few REAs are involved in the project. He said they need an even flow of the river. Rep. Johnston said he would like to keep the original wording in the revision.

The House Natural Resources Committee convened on March 14, 1979, at 12:30 p.m., in room 3 of the Capital Annex, with Chairman Sheldon presiding and sixteen members present (absent was Rep. Fagg and excused were Reps. Huennakens & Scully) for a hearing on the following bill:

SENATE BILL 515

SENATOR CARROLL A. GRAHAM, District 29, the chief sponsor, said this was an act to make the amendments needed to bring the Montana Strip and Underground Mine Reclamation Act into compliance with the federal law. A copy of his testimony is exhibit 1 and part of the minutes.

LEO BERRY, State Lands, spoke next in support with a few suggested amendments. A copy of his testimony is exhibit 2 and a copy of the suggested amendments is exhibit 3 of the minutes.

TERRY MURPHY, Chairman of the Laborer's Council, said their council had voted unanimously to support Senate Bill 515.

JIM MOCKLER, Montana Coal Council, spoke in support. He presented a copy of a newspaper clipping from the Casper, WY, Star Tribune (exhibit 4) for March 7, 1979, which was Governor Herscher's press release blasting the U.S. Office of Surface Mining for incompetence and flagrant violation of federal law. Mr. Mockler said the clipping spells out his exasperation with the OSM. He said they met with the State Lands Department and the State Lands met with the environmental concerns and together a consensus was arrived at and the bill was the result. He didn't feel the amendments suggested are necessary, especially not the third amendment.

DAVID ALBERSWORTH, Northern Plains Resource Council, spoke in support with a suggested amendment. A copy of his amendment is exhibit 5 and part of the minutes. Exhibit 6 is the federal code the amendment is taken from. Exhibit 7 is a copy of the facts presented by Mr. Albersworth. Exhibit 8 is a copy of the letter Mr. Berry received from Donald Crane, Regional Director of the Office of Surface Mining, outlining points of deficiency in the state program.

GENE PHILLIPS, Decker Coal Co. and NERCO, said they support the bill and urged that it be concurred in.

Senator Graham closed. He said he hoped the bill wouldn't be substantially changed with the amendments. He said he hadn't had a chance as yet to check out the proposed amendments to see what they would do--he expressed a wish that proposed amendments would be given to the sponsor ahead of time.

During questions from the committee, Mr. Berry said the reason for their suggested amendments is they were specifically mentioned in their most recent letter from Mr. Crane as needing to be in the statutes. He said the other points mentioned in the letter which is exhibit 8 he felt could be handled by their rules and regulations authority. He did not feel the amendment suggested by the NPRC was necessary and could be limiting. Mr. Berry said in drafting the bill

March 14, 1979

he only added those things necessary to get the program in compliance and so approved by the Office of Surface Mining.

Chairman Sheldon left to attend a Senate hearing and Vice-Chairman Harper took the chair.

Vice-Chairman Harper said he had talked by telephone with Mr. Crane that morning and Mr. Crane had said he couldn't assure him that the program would be accepted--they would need to see and study the whole program. Rep. Harper felt the remaining 13 points on exhibit 8 would be definitely gray areas--the more points left out of statutory law the more possibility of not being accepted. Rep. Harper added that Mr. Crane had said the State Lands staff in Montana is the best staff in the United States. Rep. Harper also questioned how the passage of HB 406 on accepting differing revegetations would affect the program, or how the program would affect the bill.

Rep. Metcalf asked if there should be a statement of intent with the bill. He felt there would be a lot of rule making authority needed by the Department of State Lands to bring all the other needed points into compliance. Mr. Berry felt the present Strip Mine Act's rule making authority would suffice so didn't feel a statement of intent was needed. Mr. Mockler pointed out this would need to come from the originating house and he also did not feel a statement of intent was needed.

In response to a direct question from Vice-Chairman Harper as to whether the department had the clear statutory authority upon which to base the rules needed to meet the minimum standards of the federal act, John North (lawyer for State Lands) replied to the affirmative. Mr. North did question the authority and the interpretation of the OSM to require what they are requiring.

Rep. Quilici asked Mr. Berry if he felt he had the existing authority without this act and Mr. Berry responded "yes."

Rep. Needy questioned why the amendment suggested by the NPRC which included "on an experimental basis" should not be included. Mr. Berry felt this would limit the application to just experimenting so it could not be used even if successful. Mr. Berry didn't see any value in the amendment. He said the present law permits experimenting. Mr. Albersworth responded that the language in the amendment does limit the department's discretion in the use of introduced species and grasses. They feel, he said, this should be in the statutory law. Rep. Curtiss questioned if we need to stay in the experiment stage forever. Rep. Metcalf suggested this language would allow the experimenting and next session if it works it could become a proposed alternative. Mr. North said in discussing the point with Mr. Crane he said it is a concern but not necessarily one that needs to be in statutory law.

6x.1

Senator Carroll Graham

TESTIMONY SB 515
SENATOR CARROLL GRAHAM

Mr. Chairman and members of the Committee, as you all know, the mainstay of eastern Montana's economy is grazing and agriculture. That portion of our state also contains some of the richest strippable coal deposits in the nation. In these days of high energy consumption, the national interest demands that this coal be mined. However, it is vital to Montana's long-term economic health to insure that strip-mined areas be effectively reclaimed so that our agricultural and grazing industry is not diminished. It is for this reason that I have been involved in Montana's reclamation program since 1973. It is now necessary to amend the state's law for the following reasons.

In 1977, Congress passed the federal strip mine act. That act sets minimum standards and procedures which every coal producing state in the nation must meet. One of the federal bill's major provisions allows states to regulate strip mining within their borders if they enact and receive approval from the Secretary of Interior for their regulatory programs. Over the past year and a half, representatives of the Department of State Lands have met with federal officials to determine what changes in our law would be necessary to comply with the federal act. This bill makes the necessary changes--and only those changes. At my direction, the Department has included only those amendments absolutely essential for compliance with the federal act. I am satisfied that they have done so.

If we do not amend our act, the federal government will regulate strip mining in Montana. It would not be in the best interest of anyone--coal companies, farmers, ranchers, or other citizens of Montana--to have the industry regulated from Denver or Washington, DC by a massive federal bureaucracy. The Office of

Surface Mining has already demonstrated the federal characteristics of delay by being eight months behind schedule on implementing the act. A federally-run program in Montana would mean bureaucratic delays for the coal mining industry, less effective reclamation, less efficient use of tax dollars, and no state input into the program. It is therefore imperative that this bill be passed.

Montana's act is for the most part as stringent as the federal act--in fact, many federal provisions were taken from our act. The major changes SB 515 makes are:

- (1) Designation of Lands Unsuitable - The Department presently has authority to deny a permit to mine on critical, unique, or fragile lands. It does not exercise this authority until a permit application is received. The federal law requires the Department to be able to designate areas unsuitable for mining based on the provisions of the federal act.
- (2) Alluvial Valley Floors - State Lands must have authority to prohibit mining which would destroy the essential hydrologic functions of alluvial valley floors or would interrupt or preclude a significant portion of an irrigated farming operation on an alluvial valley floor.
- (3) Prime Farmlands - More extensive topsoiling procedures are required for prime farmland areas. It appears that there are very few prime farmlands within potential coal-producing areas.
- (4) Hydrologic Requirements - The federal law requires more detailed analysis of the hydrologic effects of mining on the permit and surrounding areas. If available, the state or federal government must provide applicants with baseline information necessary for compliance with this requirement.

- (5) Coal Conservation - The federal bill requires coal conservation programs to be subject to the same procedures as the other requirements and for the requirements to apply to underground mining. The Montana Strip Mined Coal Conservation Act has therefore been repealed and its provisions incorporated into the strip mine act.
- (6) Small Operator Assistance - State Lands must financially assist small operators. Federal funds are available to the state for the program.
- (7) Procedures - Additional hearings, increased maximum penalties, minimum bonds, and civil actions for persons damaged by coal mining are provided.
- (8) Abandoned Coal Mine Lands - State Lands is given authority to reclaim abandoned coal-mined lands that were mined and unreclaimed prior to the act. Federal funds are available for these reclamation projects. This section will be of limited application because there are very few abandoned and unreclaimed coal lands in Montana.

I am also submitting amendments to the bill which further clarify that the major provisions apply to coal mining only and not to uranium mining. The major requirements for uranium mining will remain unchanged. In the best interests of the people of the state of Montana, I urge you to give this bill a "do pass" recommendation.

AMENDMENTS - SB 515

1. Page 14, line 18.
Following: "underground-"
Strike: "coal-"
2. Page 18, line 13.
Following: "consequences of"
Strike: "the"
Insert: "coal"
3. Page 22, line 1.
Following: "for a"
Insert: "coal mining"
4. Page 26, line 22.
Following: "a"
Insert: "coal"
5. Page 27, line 6.
Following: "The proposed"
Strike: "surface-"
Insert: "strip- or underground-"
6. Page 27, line 24.
Following: "to conduct"
Strike: "surface-"
Insert: "strip- or underground-"
7. Page 28, line 7.
Following: "To mine"
Insert: "coal"
8. Page 29, line 12.
Following: "or underground"
Insert: "coal"
9. Page 29, line 24.
Following: "(8) No"
Strike: "surface"
Insert: "strip- or underground-"
10. Page 31, line 7.
Following: "underground-"
Insert: "coal-"
11. Page 31, line 13.
Following: "issue a"
Insert: "coal"
12. Page 31, line 18.
Following: "issue a"
Insert: "coal"
13. Page 31, line 21.
Following: "controls any"
Insert: "coal"
14. Page 40, line 1.
Following: "and after"
Insert: "coal"
15. Page 44, line 2.
Following: "(3) For"
Insert: "coal mining on"
16. Page 46, line 15.
Following: "for prime farmlands"
Insert: "mined for coal"
17. Page 54, line 25.
Following: "underground-"
Insert: "coal-"
18. Page 56, line 10.
Following: "underground-"
Strike: "coal-"
19. Page 58, line 9.
Following: "underground-"
Strike: "coal-"
20. Page 61, line 1.
Following: "to enforce"
Insert: "or implement"

TESTIMONY - AMENDMENTS TO SB 515

As Senator Graham has pointed out, the Department of State Lands has over the past year worked with the Office of Surface Mining and Denver Field Solicitor's Office to develop a bill which would bring the Montana Strip and Underground Mine Reclamation Act into compliance with the federal strip mine law. SB 515 represents the product of that work. When the bill was introduced in the Senate, it appeared to have incorporated all the amendments OSM considered necessary to give Montana authority to develop a program that would meet federal requirements.

After SB 515 was introduced, OSM submitted a list of comments containing recommendation for modification of SB 515. OSM did not at that time indicate that any of the changes were necessary for us to obtain federal approval. Many result from federal misinterpretation of our law, and other recommendations can be implemented by rule.

However, by letter of Monday, March 12, Don Crane, Regional Director of OSM, has indicated that one of the earlier suggested amendments is necessary for us to obtain OSM approval. That amendment would allow nonresidents of the state who can show that the Department has failed to enforce the act in any respect would adversely affect their interests to bring a mandamus action against the Department.

In addition, Mr. Crane's letter indicates that OSM is requiring all state regulatory authorities to have statutory authorization to require operators to allow a citizen to accompany Department personnel on inspections that result from information provided by that citizen. At all times prior to March 9, OSM had indicated that this was not a mandatory requirement of the act.

PROPOSED AMENDMENTS TO SB 515

1. Page 60, line 21

Following: "this state"

Insert: "or any person having an interest which is or may be adversely affected"

2. Page 61, line 10

Following: "the resident"

Insert: "or person having an interest which is or may be adversely affected"

3. Page 14, line 23

Following: "this part."

Insert: "When an inspection results from information provided to the department by any person, the department shall notify that person when the inspection is proposed to be made and that person shall be allowed to accompany the inspector during the inspection."

mockler
Ex. 4

Wednesday, March 7, 1979 Star-Tribune, Casper, Wyo.—19

Herschler blasts feds

WASHINGTON (UPI) — Gov. Ed Herscher, in bitter testimony before a congressional committee, Monday accused the U.S. Office of Surface Mining of incompetence and flagrant violation of federal law.

"From the beginning, the Office of Surface Mining has treated the states as if only the federal government could be trusted to care for the environment," Herscher told the House Interior Committee.

"I believe that this attitude is flagrantly contrary to what the Congress intended and that it has engendered a reciprocal mistrust which lies at the heart of the present federal-state tensions."

Herschler said Wyoming would go to court if the agency threatened the survival of effective state regulatory authority.

Accusing the OSM with incompetence and obstruction, Herscher said the agency had:

- Failed to meet a deadline for publication of a federal-state agreement governing mined-land reclamation in Wyoming, the document which gives the state authority to regulate mining on federal lands.

- Shown a general inability to meet

statutory deadlines.

- Created a web of detailed but ambiguous rules resulting in a "lawyer's maze which is designed to confuse and harass an adversary ... This is a system designed with welfare cheats in mind, not sovereign states."

- Ordered Wyoming to issue rules governing mining on mountaintops, an activity which does not exist in the state.

"For the present," Herscher said, "my solution to this nonsense has been to direct the Wyoming Attorney General to ignore correspondence which continues in the same vein. But I know that I have not heard the last of it."

Herschler accused the agency of subverting the intent of the Surface Mining Reclamation and Control Act of 1977, a measure he said did not contemplate "subservience" on the part of the states.

"But the Office of Surface Mining has proceeded for much of the past year on this assumption," he said. "Nothing sort of a nationwide set of state-level clones of the Office of Surface Mining, directly and immediately responsive to national and regional offices of the federal government, will satisfy the implicit demands of the federal regulations and practices."

PROPOSED AMENDMENT TO H.B. 515

Sec. 82-4-232 to be amended as follows:

~~(6)~~ (7) In order to encourage advances in mining and reclamation practices or to allow post-mining land use for industrial, commercial, residential, or public use (including recreational facilities), the department may authorize departures in individual cases on an experimental basis from the environmental performance standards contained in 82-4-232 (1) through (5) and 82-4-233.

Such departures may be authorized if (i) the experimental practices are potentially more or at least ^{as} environmentally protective, during and after mining operations, as those required by promulgated standards, (ii) the mining operations approved for particular land-use or other purposes are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practices; and (iii) the experimental practices do not reduce the protection afforded public health and safety below that provided by promulgated standards.

~~(6)~~ ~~(7)~~ (8) An operator may propose alternative plans pursuant to (7) other than backfilling, grading, highwall reduction, or topsoiling if the restoration will be consistent with the purpose of this part...

11.6
alhusen

EXPERIMENTAL PRACTICES

Sec. 711. In order to encourage advances in mining and reclamation practices or to allow post-mining land use for industrial, commercial, residential, or public use (including recreational facilities), the regulatory authority with approval by the Secretary may authorize departures in individual cases on an experimental basis from the environmental protection performance standards promulgated under sections 515 and 516 of this Act. Such departures may be authorized if (i) the experimental practices are potentially more or at least as environmentally protective, during and after mining operations, as those required by promulgated standards; (ii) the mining operations approved for particular land-use or other purposes are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practices; and (iii) the experimental practices do not reduce the protection afforded public health and safety below that provided by promulgated standards. 30 USC 1301.

Ex. 7 albers

The intent of this amendment is to bring Sec. 82-4-232. (6) MCA (Sec. 82-4-232. (7) in SB 515, beginning on p. 47. line 24) into conformity with the more stringent provisions for variances from reclamation performance standards provided in the federal strip mine law.

The Department of the Interior's Office of the Solicitor has described Sec. 82-4-232. (6) as a "major deficiency" in Montana's program, "clearly inconsistent with the federal act by allowing broad regulatory discretion to vary the terms of the performance standards on a case-by-case basis."¹ Subsequently, in a letter to the Department of State Lands Commissioner Leo Berry dated March 12, 1979, the Denver Regional Director of the federal Office of Surface Mining notes that office's concerns about the "Broad regulatory discretion to approve alternative reclamation plans that vary from the performance standards..."²

The provision of the federal Surface Mining Control and Reclamation Act which allows variances from the general reclamation performance standards provided in the act is contained in Sec. 711. The proposed amendment is essentially the same as Sec. 711, except that the amendment refers to "the department" rather than to "the regulatory authority" and "the Secretary", and the state law's reclamation performance criteria is referenced rather than those of the federal law. Sec. 711 allows for variances from the established reclamation performance standards on an experimental basis. This is clearly more stringent than the current language in Montana's law, which does allow the department wide latitude in granting variances from Montana's reclamation standards.

The proposed amendment inserts the federal language as subsection (7) in 82-4-232, and refers the existing variance (82-4-232: (7) in SB 515) to that amendment.

The Department of State Lands has proposed that the concerns about the variance provision in Montana's law be taken care of through rules and regulations adopted by the department. A statute, however, would clearly delineate the legislative intent with regard to the implementation of the existing variance provision. The body of SB 515 quite easily accommodates the language from Sec. 711 of the federal act and clearly limits by statute the department's discretionary power to permit variances from the reclamation performance standards.

1. Memorandum from the Regional Solicitor, United States Department of the Interior, Office of the Solicitor, Denver, to the Assistant Solicitor, Governmental Relations, January 30, 1979, pp. 2-3.

2. Letter from Donald Crane, Regional Director, Region V, Office of Surface Mining to Leo Berry, dated March 12, 1979. p. 2.



United States Department of the Interior

OFFICE OF SURFACE MINING
Reclamation and Enforcement
WASHINGTON, D.C. 20146

MAR 12 1979

Mr. Leo Berry
Commissioner, Department of State Lands
State Capitol
Helena, Montana 59601

Dear Leo:

You previously received from me a detailed analysis of Montana's proposed legislation to implement P.L. 95-87, the Surface Mining Control and Reclamation Act of 1977. I have subsequently discussed these issues with John North.

While I understand that recent steps have been taken to amend the pending bill in order to remedy a few of these concerns, neither I nor the Solicitor's Office have had an opportunity to review HB 406 and SB 515 as passed by the respective chambers this session.

Following is a listing of those concerns. I have today further discussed the items set forth with John North and understand that he believes many of these issues will be resolved in the permanent program submitted with the necessary legal authority. With respect to the following, I want to especially call to your attention items (2) and (11) which are necessary as part of your legislative package:

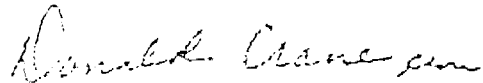
(1) Lack of a criminal penalty for failure or refusal to comply with any order, as in Section 518(e) of the Federal Act;

(2) Absence of an equivalent to Section 521(a) requiring (1) State action within 10 days of notice from the Secretary, (2) a State investigation of citizen complaints, and (3) that citizens be allowed to accompany State inspectors on the mine site;

(3) Improper restrictions of the State's discretion to designate land unsuitable for incompatibility with land-use plans; should not be limited "to the extent they affect mining in the area";

- (4) Shorter statutes of limitations for civil penalties and criminal offenses;
- (5) The Board of Land Commissioners must be subject to financial interest restrictions;
- (6) Broad regulatory discretion to approve alternative reclamation plans that vary from the performance standards;
- (7) Lack of prohibition or regulation of all waste dams, as provided in Sections 515(b)(13) and 516(b)(5) of the Federal Act;
- +(8) Absence of requirements that land be restored to prior or better uses and a vegetative cover at least equal to cover of natural vegetation;
- (9) Omission of provisions to retain, at all times, enough bond to cover remaining reclamation costs and to prevent full bond release until all reclamation requirements are met;
- (10) Lack of authority to promulgate bonding regulations or allow for public notice, hearing or bond changes upon permit renewal, and failure to specify bond area or period of liability;
- (11) Improper restriction of citizen suits to resident;
- (12) Failure to protect uses of surface water sources, as in Section 717(b) of the Federal Act;
- (13) Incorrect limitation of small operator hydrologic test costs to extent Federal funds are received;
- (14) Absence of statutory provisions parallel to Section 517(b) (and 2), (c), (d), (e) and procedures of (g) of the Federal Act;
- (15) Lack of definitions for approximate original contour, permit, permit area, surface coal mining operations and surface coal mining and reclamation operations.

Because we do not have the pending bills, I cannot address the adequacy with which they have been satisfied. I hope that my discussion with John North has clearly articulated our concern that Montana have an approvable program and that your legislation be sufficient to achieve this goal.

A handwritten signature in cursive script, reading "Donald Crane".

Donald Crane
Regional Director, Region V

1 STATEMENT OF INTENT RE: SB 515
2
3

4 It is the intent of the Legislature that the Board of
5 Land Commissioners' present rulemaking authority applies to
6 SB 515 so that the Board has authority to make the rule
7 changes necessary to insure approval of Montana's
8 reclamation program by the United States Department of the
9 Interior.

SENATE BILL NO. 515

INTRODUCED BY GRAHAM, ROSKIE

A BILL FOR AN ACT ENTITLED: "AN ACT TO MAKE ONLY THOSE AMENDMENTS NECESSARY TO BRING THE MONTANA STRIP AND UNDERGROUND MINE RECLAMATION ACT INTO COMPLIANCE WITH PUBLIC LAW 95-87, THE SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977; TO REPEAL THE STRIP-MINED COAL CONSERVATION ACT; AMENDING SECTIONS 70-30-102, 82-4-202 THROUGH 82-4-205, 82-4-221 THROUGH 82-4-223, 82-4-225, 82-4-227, 82-4-228, 82-4-231, 82-4-232, 82-4-235, 82-4-239, 82-4-251, 82-4-252, 82-4-254; AND REPEALING SECTIONS 82-3-101 THROUGH 82-3-110, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 82-4-202, MCA, is amended to read:

"82-4-202. Policy -- findings. (1) It is the declared policy of this state and its people to:

(a) maintain and improve the state's clean and healthful environment for present and future generations;

(b) protect its environmental life-support system from degradation;

(c) prevent unreasonable degradation of its natural resources;

(d) restore, enhance, and preserve its scenic,

historic, archeologic, scientific, cultural, and recreational sites;

(e) demand effective reclamation of all lands disturbed by the taking of natural resources and maintain state administration of the reclamation program;

(f) require the legislature to provide for proper administration and enforcement, create adequate remedies, and set effective requirements and standards (especially as to reclamation of disturbed lands) in order to achieve the aforementioned objectives; and

(g) provide for the orderly development of coal resources through strip or underground mining to assure the wise use of these resources and prevent the failure to conserve coal.

(2) The legislature hereby finds and declares that:

(a) in order to achieve the aforementioned policy objectives, promote the health and welfare of the people, control erosion and pollution, protect domestic stock and wildlife, preserve agricultural and recreational productivity, save cultural, historic, and aesthetic values, and assure a long-range dependable tax base, it is reasonably necessary to require, after March 16, 1973, that all strip-mining and underground-mining operations be limited to those for which annual 5-year permits are granted, that no permit be issued until the operator

1 presents a comprehensive plan for reclamation and
 2 restoration ~~and a coal conservation plan~~, together with an
 3 adequate performance bond, and the plan is approved, that
 4 certain other things must be done, that certain remedies are
 5 available, and that certain lands because of their unique or
 6 unusual characteristics may not be strip-mined or
 7 underground-mined under any circumstances, all as more
 8 particularly appears in the remaining provisions of this
 9 part, ~~and that the department be given authority to~~
 10 ~~administer and enforce a reclamation program that complies~~
 11 ~~with Public Law 95-87, the Surface Mining Control and~~
 12 ~~Reclamation Act of 1977, as amended;~~

13 (b) this part be deemed to be an exercise of the
 14 authority granted in the Montana constitution, as adopted
 15 June 6, 1972, and, in particular, a response to the mandate
 16 expressed in Article IX thereof and also be deemed to be an
 17 exercise of the general police power to provide for the
 18 health and welfare of the people."

19 Section 2. Section 82-4-203, MCA, is amended to read:
 20 "82-4-203. Definitions. Unless the context requires
 21 otherwise, in this part the following definitions apply:

22 (1) "Abandoned" means an operation where no mineral is
 23 being produced and where the department determines that the
 24 operation will not continue or resume.

25 (2) "Alluvial valley floor" means the unconsolidated

1 stream-laid deposits holding streams where water
 2 availability is sufficient for subirrigation or flood
 3 irrigation agricultural activities; but the term does not
 4 include upland areas which are generally overlain by a thin
 5 veneer of colluvial deposits composed chiefly of debris from
 6 sheet erosion, deposits by unconcentrated runoff or slope
 7 wash, together with talus, other mass movement accumulation,
 8 and windblown deposits.

9 (2)(3) "Aquifer" means any geologic formation or
 10 natural zone beneath the earth's surface that contains or
 11 stores water and transmits it from one point to another in
 12 quantities which permit or have the potential to permit
 13 economic development as a water source.

14 (3)(4) "Area of land affected" means the area of land
 15 from which overburden is to be or has been removed and upon
 16 which the overburden is to be or has been deposited and
 17 includes all land overlying any tunnels, shafts, or other
 18 excavations used to extract the mineral, lands affected by
 19 the construction of new railroad loops and roads or the
 20 improvement or use of existing railroad loops and roads to
 21 gain access and to haul the mineral, processing facilities
 22 at or near the mine site or other mine associated
 23 facilities, waste deposition areas, treatment ponds, and any
 24 other surface or subsurface disturbance associated with
 25 strip mining or underground mining, and all activities

1 necessary and incident to the reclamation of such
2 operations.

3 {4}{15} "Bench" means the ledge, shelf, table, or
4 terrace formed in the contour method of strip mining.

5 {5}{16} "Board" means the board of land commissioners
6 provided for in Article X, section 4, of the constitution of
7 this state.

8 {7} "Coal conservation plan" means the planned course
9 of conduct of a strip- or underground-mining operation to
10 include plans for the removal and utilization of minable and
11 marketable coal located within the area planned to be mined.

12 {6}{18} "Commissioner" means the commissioner of state
13 lands provided for in 2-15-3202.

14 {7}{19} "Contour strip mining" means that strip-mining
15 method commonly carried out in areas of rough and hilly
16 topography in which the coal or mineral seam outcrops along
17 the side of the slope and entrance is made to the seam by
18 excavating a bench or table cut at and along the site of the
19 seam outcropping with the excavated overburden commonly
20 being cast down the slope below the mineral seam and the
21 operating bench.

22 {8}{101} "Degree" means from the horizontal and in each
23 case is subject to a tolerance of 5% error.

24 {9}{111} "Department" means the department of state
25 lands provided for in Title 2, chapter 15, part 32.

1 {12} "Failure to conserve coal" means the nonremoval or
2 nonutilization of strippable and marketable coal by an
3 operation, provided that the nonremoval or nonutilization of
4 minable and marketable coal in accordance with reclamation
5 standards established by the department shall not be
6 considered failure to conserve coal.

7 {10}{13} "Fill bench" means that portion of a bench or
8 table which is formed by depositing overburden beyond or
9 downslope from the cut section as formed in the contour
10 method of strip mining.

11 {14} "Imminent danger to the health and safety of the
12 public" means the existence of any condition or practice or
13 any violation of a permit or other requirement of this part
14 in a strip- or underground-coal-mining and reclamation
15 operation that could reasonably be expected to cause
16 substantial physical harm to persons outside the permit area
17 before such conditions, practices, or violation can be abated.
18 A reasonable expectation of death or serious injury before
19 abatement exists if a rational person, subjected to the same
20 conditions or practices giving rise to the peril, would not
21 expose himself or herself to the danger during the time
22 necessary for abatement.

23 {15} "Marketable coal" means a minable coal that is
24 economically feasible to mine and is fit for sale in the
25 usual course of trade.

~~(116)~~ "Method of operation" means the method or manner by which the cut, open pit, shaft, or excavation is made, the overburden is placed or handled, water is controlled, and other acts are performed by the operator in the process of uncovering and removing the minerals that affect the reclamation of the area of land affected.

~~(117) "Minable coal" means that coal which can be removed through strip- or underground-mining methods adaptable to the location that coal is being mined or is planned to be mined.~~

~~(118)~~ "Mineral" means coal and uranium.

~~(119)~~ "Operation" means all of the premises, facilities, railroad loops, roads, and equipment used in the process of producing and removing mineral from and reclaiming a designated strip-mine or underground-mine area and all activities, including excavation incident thereto, or prospecting for the purpose of determining the location, quality, or quantity of a natural mineral deposit.

~~(120)~~ "Operator" means a person engaged in strip mining or underground mining who removes or intends to remove more than 10,000 cubic yards of mineral or overburden or a person engaged in coal mining who removes or intends to remove more than 250 tons of coal from the earth by mining within 12 consecutive calendar months in any one location.

~~(121)~~ "Overburden" means all of the earth and other

materials which lie above a natural mineral deposit and also means such earth and other material after removal from their natural state in the process of mining.

~~(122)~~ "Person" means a person, partnership, corporation, association, or other legal entity or any political subdivision or agency of the state or federal government.

~~(123) "Prime farmland" means that land previously prescribed by the United States secretary of agriculture on the basis of such factors as moisture availability, temperature regime, chemical balance, permeability, surface-layer composition, susceptibility to flooding, and erosion characteristics and which historically has been used for intensive agricultural purposes and as defined in the Federal Register.~~

~~(124)~~ "Prospecting" means the removal of overburden, core drilling, construction of roads, or any other disturbance of the surface for the purpose of determining the location, quantity, or quality of a natural mineral deposit.

~~(125)~~ "Reclamation" means backfilling, subsidence stabilization, water control, grading, highwall reduction, topsoiling, planting, revegetation, and other work to restore an area of land affected by strip mining or underground mining under a plan approved by the department.

1 ~~†19†~~~~126~~ "Strip mining" means any part of the process
 2 followed in the production of mineral by the opencut method,
 3 including mining by the auger method or any similar method
 4 which penetrates a mineral deposit and removes mineral
 5 directly through a series of openings made by a machine
 6 which enters the deposit from a surface excavation or any
 7 other mining method or process in which the strata or
 8 overburden is removed or displaced in order to recover the
 9 mineral.

10 ~~†20†~~~~127~~ "Subsidence" means a vertically downward
 11 movement of overburden materials resulting from the actual
 12 mining of an underlying mineral deposit or associated
 13 underground excavations.

14 ~~†21†~~~~128~~ "Surface owner" means a person who holds legal
 15 or equitable title to the land surface and whose principal
 16 place of residence is on the land or who personally conducts
 17 farming or ranching operations upon a farm or ranch unit to
 18 be directly affected by strip-mining operations or who
 19 receives directly a significant portion of his income, if
 20 any, from such farming or ranching operations or the state
 21 of Montana where the state owns the surface.

22 ~~†22†~~~~129~~ "Topsoil" means the unconsolidated mineral
 23 matter naturally present on the surface of the earth that
 24 has been subjected to and influenced by genetic and
 25 environmental factors of parent material, climate, macro-

1 and micro-organisms, and topography, all acting over a
 2 period of time, and that is necessary for the growth and
 3 regeneration of vegetation on the surface of the earth.

4 ~~†23†~~~~130~~ "Underground mining" means any part of the
 5 process followed in the production of a mineral such that
 6 vertical or horizontal shafts, slopes, drifts, or incline
 7 planes connected with excavations penetrating the mineral
 8 stratum or strata are utilized and includes mining by in
 9 situ methods.

10 ~~†31~~ "Unwarranted failure to comply" means the failure
 11 of a permittee to prevent the occurrence of any violation of
 12 his permit or any requirement of this part due to
 13 indifference, lack of diligence, or lack of reasonable care,
 14 or the failure to abate any violation of such permit or this
 15 part due to indifference, lack of diligence, or lack of
 16 reasonable care.

17 ~~†24†~~~~132~~ "Waiver" means any document which demonstrates
 18 the clear intention to release rights in the surface estate
 19 for the purpose of permitting the extraction of subsurface
 20 minerals by strip-mining methods.

21 ~~†25†~~~~133~~ "Written consent" means such written statement
 22 as is executed by the owner of the surface estate, upon a
 23 form approved by the department, demonstrating that such
 24 owner consents to entry of an operator for the purpose of
 25 conducting strip-mining operations and that such consent is

1 given only to such strip-mining and reclamation operations
2 which fully comply with the terms and requirements of this
3 part."

4 Section 3. Section 82-4-204, MCA, is amended to read:
5 "82-4-204. Board orders, rules, and hearings. The
6 board shall:

7 (1) issue, after an opportunity for a hearing, orders
8 requiring an operator to adopt the remedial measures
9 necessary to comply with this part and rules adopted under
10 this part;

11 (2) issue, after an opportunity for a hearing, a final
12 order directing the department to revoke a permit when the
13 requirements set forth by the notice of noncompliance, order
14 of suspension, or an order of the board requiring remedial
15 measures have not been complied with according to the terms
16 herein;

17 (3) adopt, after an opportunity for a hearing, general
18 rules pertaining to strip mining and to underground mining
19 to accomplish the purposes of this part;

20 (4) conduct hearings under provisions of this part or
21 rules adopted by the board."

22 Section 4. Section 82-4-205, MCA, is amended to read:

23 "82-4-205. Administration by department of state
24 lands. The department:

25 (1) shall exercise general supervision,

1 administration, and enforcement of this part and all rules
2 and orders adopted under this part;

3 (2) shall examine and pass upon all plans and
4 specifications submitted by the operator for the method of
5 operation, subsidence stabilization, water control,
6 backfilling, grading, highwall reduction, topsoiling, and
7 for the reclamation of the area of land affected by his
8 operation;

9 (3) shall order the suspension of any permit for
10 failure to comply with this part or any rule adopted under
11 this part;

12 (4) shall order the halting of any operation that is
13 started without first having secured a permit as required by
14 this part or order the cessation of operations not in
15 compliance with this part in accordance with 82-4-251;

16 (5) shall make investigations and inspections
17 necessary to insure compliance with this part;

18 (6) may encourage and conduct investigations,
19 research, experiments, and demonstrations and collect and
20 disseminate information relating to strip mining and to
21 underground mining and reclamation of lands and waters
22 affected by strip mining and underground mining;

23 (7) may adopt rules with respect to the filing of
24 reports, the issuance of permits, monitoring, and other
25 matters of procedure and administration;

1 (8) may conduct hearings under the provisions of this
2 part."

3 Section 5. Section 82-4-221, MCA, is amended to read:

4 "82-4-221. Mining permit required. (1) An operator may
5 not engage in strip or underground mining without having
6 first obtained from the department a permit designating the
7 area of land affected by the operation, which designation
8 shall include all lands reasonably anticipated to be mined
9 or otherwise affected during the applicable 5-year period.
10 The permit shall authorize the operator to engage in strip
11 or underground mining upon the area of land described in his
12 application and designated in the permit for a period of 5
13 years from the date of its issuance. Such permit shall be
14 renewable upon each 5-year anniversary thereafter upon
15 application to the department at least 30 but not more than
16 60 days prior to the renewal date so long as the operator is
17 in compliance with the requirements of this part, the rules
18 hereunder, and the reclamation plan provided for in 82-4-231
19 and agrees to comply with all applicable laws and rules in
20 effect at the time of renewal. Such renewal shall further be
21 subject to the denial provisions of 82-4-227, 82-4-234, and
22 82-4-251. On application for renewal, the burden shall be
23 on the opponents of renewal to demonstrate that the permit
24 should not be renewed. A permit shall terminate if the
25 permittee has not commenced strip- or underground-mining

1 operations pursuant to the permit within 3 years of the
2 issuance of the permit. However, the department may grant
3 reasonable extensions of time upon a showing that such
4 extensions are necessary by reason of litigation precluding
5 the commencement or threatening substantial economic loss to
6 the permittee or by reason of conditions beyond the control
7 and without the fault or negligence of the permittee. With
8 respect to coal to be mined for use in a synthetic fuel
9 facility or specific major electric generating facility, the
10 permittee is considered to have commenced strip- or
11 underground-mining operations at such time as the
12 construction of the synthetic or generating facility is
13 initiated.

14 (2) As a condition to the issuance of every permit
15 issued under this part, an authorized representative of the
16 department shall, without advance notice, have the right of
17 entry to, upon, or through a strip- or
18 underground-coal-mining UNDERGROUND-MINING operation or any
19 premises in which any records required to be maintained
20 under this part are located and may, at reasonable times and
21 without delay, have access to copy any records and inspect
22 any monitoring equipment or method of operation required
23 under this part. WHEN AN INSPECTION RESULTS FROM INFORMATION
24 PROVIDED TO THE DEPARTMENT BY ANY PERSON, THE DEPARTMENT
25 SHALL NOTIFY THAT PERSON WHEN THE INSPECTION IS PROPOSED TO

1 BE MADE AND THAT PERSON SHALL BE ALLOWED TO ACCOMPANY THE
2 INSPECTOR DURING THE INSPECTION.

3 (3) During the term of the permit, the permittee may
4 submit an application for a revision of the permit, together
5 with a revised reclamation plan, to the department. The
6 department may not approve the application unless it finds
7 that reclamation in accordance with this part would be
8 accomplished. Application for minor revision shall be
9 approved or disapproved within a reasonable time, depending
10 on the scope and complexity, but in no case longer than 120
11 days. Applications for major revisions are subject to all
12 the permit application requirements and procedures."

13 Section 6. Section 82-4-222, MCA, is amended to read:

14 "82-4-222. Permit application. (1) An operator
15 desiring a permit shall file an application which shall
16 contain a complete and detailed plan for the mining,
17 reclamation, revegetation, and rehabilitation of the land
18 and water to be affected by the operation. Such plan shall
19 reflect thorough advance investigation and study by the
20 operator and shall include all known or readily discoverable
21 past and present uses of the land and water to be affected
22 and the approximate periods of such use and shall state:

23 (a) the location and area of land to be affected by
24 the operation, with a description of access to the area from
25 the nearest public highways;

1 (b) the names and addresses of the owners of record of
2 the surface of the area of land to be affected by the permit
3 and the owners of record of all surface area within one-half
4 mile of any part of the affected area;

5 (c) the names and addresses of the present owners of
6 record of all subsurface minerals in the land to be
7 affected;

8 (d) the source of the applicant's legal right to mine
9 the mineral on the land affected by the permit;

10 (e) the permanent and temporary post-office addresses
11 of the applicant;

12 (f) whether the applicant or any person associated
13 with the applicant holds or has held any other permits under
14 this part and an identification of those permits;

15 (g) whether the applicant is in compliance with
16 82-4-251 and, if known, whether every officer, partner,
17 director, or any individual owning of record or
18 beneficially, alone or with associates, 10% or more of any
19 class of stock of the applicant is subject to any of the
20 provisions of 82-4-251 and he shall so certify and whether
21 any of the foregoing parties or persons have ever had a
22 strip-mining or underground-mining license or permit issued
23 by any other state or federal agency revoked or have ever
24 forfeited a strip-mining or underground-mining bond or a
25 security deposited in lieu of a bond and, if so, a detailed

1 explanation of the facts involved in each case must be
2 attached;

3 (h) the names and addresses of any persons who are
4 engaged in strip or underground mining activities on behalf
5 of the applicant;

6 (i) the annual rainfall and the direction and average
7 velocity of the prevailing winds in the area where the
8 applicant has requested a permit;

9 (j) the results of any test borings or core samplings
10 which the applicant or his agent has conducted on the land
11 to be affected, including the nature and the depth of the
12 various strata or overburden and topsoil, the quantities and
13 location of subsurface water and its quality, the thickness
14 of any mineral seam, an analysis of the chemical properties
15 of such minerals, including the acidity, sulphur content,
16 and trace mineral elements of any coal seam, as well as the
17 British thermal unit (Btu) content of such seam, and an
18 analysis of the overburden, including topsoil. If test
19 borings or core samplings are submitted, each permit
20 application shall contain two copies each of two sets of
21 geologic cross sections accurately depicting the known
22 geologic makeup beneath the surface of the affected land.
23 Each set shall depict subsurface conditions at 500-foot
24 intervals across the surface and shall run at a 90-degree
25 angle to the other set unless the department determines that

1 closer intervals are required. Each cross section shall
2 depict the thickness and geologic character of all known
3 strata beginning with the topsoil. In addition, each
4 application for an underground mining permit shall be
5 accompanied by cross sections and maps showing the proposed
6 underground locations of all shafts, entries, and
7 haulageways or other excavations to be excavated during the
8 permit year. These cross sections shall also include all
9 existing shafts, entries, and haulageways.

10 (k) the name and date of a daily newspaper of general
11 circulation within the county in which the applicant has
12 ~~will prominently published~~ publish at least once a week for
13 4 successive weeks after submission of the application an
14 announcement of his application for a strip-mining or
15 underground-mining permit and a detailed description of the
16 area of land to be affected should a permit be granted;

17 (l) a determination of the probable hydrologic
18 consequences of the coal mining and reclamation operations,
19 both on and off the mine site, with respect to the
20 hydrologic regime, quantity and quality of water in surface-
21 and ground-water systems, including the dissolved and
22 suspended solids under seasonal flow conditions and the
23 collection of sufficient data for the mine site and
24 surrounding areas, so that cumulative impacts of all
25 anticipated mining in the area upon the hydrology of the

~~area and particularly upon water availability can be made. However, this determination is not required until such time as hydrologic information on the general area prior to mining is made available from an appropriate federal or state agency. The permit may not be approved until such information is available and is incorporated into the application;~~

~~(m) a coal conservation plan; and~~

~~††(n) such other or further information as the department may require.~~

(2) The application for a permit shall be accompanied by two copies of all maps meeting the requirements of the subsections below. The maps shall:

(a) identify the area to correspond with the application;

(b) show any adjacent deep mining or surface mining and the boundaries of surface properties and names of owners of record of the affected area and within 1,000 feet of any part of the affected area;

(c) show the names and locations of all streams, creeks, or other bodies of water, roads, buildings, cemeteries, oil and gas wells, and utility lines on the area of land affected and within 1,000 feet of such area;

(d) show by appropriate markings the boundaries of the area of land affected, any cropline of the seam or deposit

of mineral to be mined, and the total number of acres involved in the area of land affected;

(e) show the date on which the map was prepared and the north point;

(f) show the final surface and underground water drainage plan on and away from the area of land affected. This plan shall indicate the directional and volume flow of water, constructed drainways, natural waterways used for drainage, and the streams or tributaries receiving the discharge.

(g) show the proposed location of waste or refuse area;

(h) show the proposed location of temporary subsoil and topsoil storage area;

(i) show the location of test boring holes;

(j) show the surface location lines of any geologic cross sections which have been submitted;

(k) show a listing of plant varieties encountered in the area to be affected and their relative dominance in the area, together with an enumeration of tree varieties and the approximate number of each variety occurring per acre on the area to be affected, and the locations generally of the various kinds and varieties of plants, including but not limited to grasses, shrubs, legumes, forbs, and trees;

(l) be certified as follows: "I, the undersigned,

hereby certify that this map is correct and shows to the best of my knowledge and belief all the information required by the mining laws of this state." The certification shall be signed and notarized. The department may reject a map as incomplete if its accuracy is not so attested.

(m) contain such other or further information as the department may require.

(3) If the department finds that the probable total annual production at all locations of any strip- or underground-coal-mining operation applied for will not exceed 100,000 tons, any determination of probable hydrologic consequences that the department requires and the statement of result of test borings or core samplings shall, upon written request of the operator, be performed by a qualified public or private laboratory designated by the department. The department shall assume the cost of the determination and statement to the extent that it has received federal funds for this purpose.

~~(3)(4)~~ In addition to the information and maps required above, each application for a permit shall be accompanied by detailed plans or proposals showing the method of operation, the manner, time or distance, and estimated cost for backfilling, subsidence stabilization, water control, grading work, highwall reduction, topsoiling, planting, revegetating, and a reclamation plan for the area

affected by the operation, which proposals shall meet the requirements of this part and rules adopted under this part. The reclamation plan shall address the life of the operation and indicate the size, sequence, and the timing of the subareas for which it is anticipated that individual permits will be sought.

(5) Each applicant for a COAL MINING permit shall submit as part of the application a certificate issued by an insurance company authorized to do business in the state certifying that the applicant has in force for the strip- or underground-mining and reclamation operations for which the permit is sought a public liability insurance policy, or evidence that the applicant has satisfied other state or federal self-insurance requirements. This policy shall provide for personal injury and property damage protection in an amount adequate to compensate any persons damaged as a result of strip- or underground-coal-mining and reclamation operations, including use of explosives, and entitled to compensation under applicable provisions of state law. The permittee must maintain the policy in full force and effect during the term of the permit and any renewal until all reclamation operations have been completed.

(6) Each applicant for a strip-mining or underground-mining reclamation permit shall file a copy of his application for public inspection with the clerk and

1 recorder at the courthouse of the county where the major
2 portion of mining is proposed to occur."

3 Section 7. Section 82-4-223, MCA, is amended to read:

4 "82-4-223. Permit fee and surety bond. (1) An
5 application fee of \$50 shall be paid before the permit
6 required in this part shall be issued.

7 (2) The Before a permit may be issued, the operator
8 shall file with the department a bond payable to the state
9 of Montana with surety satisfactory to the department in the
10 penal sum to be determined by the board, on the
11 recommendation of the commissioner, of not less than \$200 or
12 ~~more--than--\$2,500~~ for each acre or fraction thereof of the
13 area of land affected, with a minimum bond of ~~\$2,000~~
14 ~~\$10,000~~, conditioned upon the faithful performance of the
15 requirements set forth in this part and of the rules of the
16 board. The operator may elect to deposit cash, negotiable
17 bonds, or negotiable certificates of deposit of any bank
18 organized or transacting business in the United States. The
19 cash deposit or market value of such securities shall be
20 equal to or greater than the amount of the bond required for
21 the bonded area. The level of bonding shall be relative to
22 the degree of disturbance projected by the original permit
23 and the annual report. A political subdivision or agency of
24 the state need not file a bond unless required to do so by
25 the board. The board may require the fitting of the bond

1 ~~prior-to-permit-issuance-or-at-any-time--thereafter--shall~~
2 ~~adjust the amount of bond required if the cost of~~
3 ~~reclamation changes.~~

4 (3) In determining the amount of the bond ~~within--the~~
5 ~~above--limits~~, the board shall take into consideration the
6 character and nature of the overburden, the future suitable
7 use of the land involved, and the cost of backfilling,
8 grading, highwall reduction, subsidence stabilization, water
9 control, topsoiling, and reclamation to be required, but in
10 no event shall the bond be less than ~~than~~ the total
11 estimated cost to the state of completing the work described
12 in the reclamation plan."

13 Section 8. Section 82-4-225, MCA, is amended to read:

14 "82-4-225. Application for increase or reduction in
15 permit area. The department may increase or reduce the area
16 of land affected by an operation under a permit on
17 application by an operator, but an increase may not extend
18 the period for which an original permit was issued. An
19 operator may, at any time, apply to the department for an
20 amendment of the permit so as to increase or reduce the
21 acreage affected by it. The operator shall file an
22 application and map in the same form and with the same
23 content as required for an original application under this
24 part and shall pay an application fee of \$50 and shall file
25 with the department a supplemental bond in the amount to be

1 determined under 82-4-223 for each acre or fraction of an
 2 acre of the increase approved. ~~All procedures of this part~~
 3 ~~pertaining to original applications apply to applications~~
 4 ~~for the increase of the area of land affected, except for~~
 5 ~~incidental boundary revisions.~~ If the department approves a
 6 reduction in the acreage covered by the original or
 7 supplemental permit, it shall release the bond for each acre
 8 reduced, but in no case shall the bond be reduced below
 9 \$2,000 ~~\$10,000~~, except as provided in 82-4-223."

10 Section 9. Section 82-4-227, MCA, is amended to read:

11 "82-4-227. Refusal of permit. (1) An application for a
 12 prospecting, strip-mining, or underground-mining permit ~~or~~
 13 ~~major revision~~ shall not be approved by the department ~~if~~
 14 ~~there--is--found unless~~ on the basis of the information set
 15 forth in the application, an on-site inspection, and an
 16 evaluation of the operation by the department, ~~the applicant~~
 17 ~~has affirmatively demonstrated~~ that the requirements of the
 18 ~~this part or and~~ rules will not be observed or ~~and~~ that the
 19 proposed method of operation, backfilling, grading,
 20 subsidence stabilization, water control, highwall reduction,
 21 topsoiling, revegetation, or reclamation of the affected
 22 ~~area cannot can~~ be carried out consistently with the purpose
 23 of this part. ~~The applicant for a permit or major revision~~
 24 ~~has the burden of establishing that his application is in~~
 25 ~~compliance with this part and the rules adopted under it.~~

1 (2) The department shall not approve the application
 2 for a prospecting, strip-mining, or underground-mining
 3 permit where the area of land described in the application
 4 includes land having special, exceptional, critical, or
 5 unique characteristics or that mining or prospecting on that
 6 area would adversely affect the use, enjoyment, or
 7 fundamental character of neighboring land having special,
 8 exceptional, critical, or unique characteristics. For the
 9 purposes of this part, land is defined as having such
 10 characteristics if it possesses special, exceptional,
 11 critical, or unique:

12 (a) biological productivity, the loss of which would
 13 jeopardize certain species of wildlife or domestic stock;

14 (b) ecological fragility, in the sense that the land,
 15 once adversely affected, could not return to its former
 16 ecological role in the reasonable foreseeable future;

17 (c) ecological importance, in the sense that the
 18 particular land has such a strong influence on the total
 19 ecosystem of which it is a part that even temporary effects
 20 felt by it could precipitate a system-wide reaction of
 21 unpredictable scope or dimensions; or

22 (d) scenic, historic, archeologic, topographic,
 23 geologic, ethnologic, scientific, cultural, or recreational
 24 significance. (In applying this subsection, particular
 25 attention should be paid to the inadequate preservation

previously accorded Plains Indian history and culture.)

(3) The department may not approve an application for a ~~strip-mining---or---underground-mining~~ ~~SIBIP- OR UNDERGROUND-COAL-MINING~~ permit or major revision unless the application affirmatively demonstrates that:

(a) the assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance has been made by the department and the proposed operation thereof has been designed to prevent material damage to the hydrologic balance outside the permit area; and

(b) the proposed ~~surface-coal-mining~~ ~~SIBIP- OR UNDERGROUND-COAL-MINING~~ operation would not:

(i) interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally subirrigated, excluding undeveloped rangelands that are not significant to farming on alluvial valley floors and those lands as to which the regulatory authority finds that if the farming that will be interrupted, discontinued, or precluded is of such small acreage as to be of negligible impact on the farm's agricultural production; or

(ii) materially damage the quantity or quality of water in surface-water or underground-water systems that supply these valley floors in subsection (3)(b)(i).

(4) Subsection (3)(b) does not affect those strip- or

~~underground-coal-mining operations that in the year preceding the enactment of Public Law 95-87 produced coal in commercial quantities and were located within or adjacent to alluvial valley floors or had obtained specific permit approval by the department to conduct surface-coal-mining~~ ~~SIBIP- OR UNDERGROUND-COAL-MINING~~ operations within alluvial valley floors. If coal deposits are precluded from being mined under this subsection, the commissioner shall certify to the secretary of interior that the mineral owner or lessee may be eligible for participation in coal exchange programs pursuant to section 510(5) of Public Law 95-87.

(5) If the area proposed to be mined contains prime farmland, the department may not grant a permit to mine COAL on the prime farmland unless it finds in writing that the applicant has the technological capability to restore the mined area, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management and can meet the soil reconstruction standards of 82-4-222(3). Nothing in this subsection applies to any permit issued prior to August 3, 1977, or to any revisions or renewals thereof, or to any existing strip- or underground-mining operations for which a permit was issued prior to August 3, 1977.

(3)(6) If the department finds that the overburden on

1 any part of the area of land described in the application
 2 for a prospecting, strip-mining, or underground-mining
 3 permit is such that experience in the state with a similar
 4 type of operation upon land with similar overburden shows
 5 that substantial deposition of sediment in streambeds,
 6 subsidence, landslides, or water pollution cannot feasibly
 7 be prevented, the department shall delete that part of the
 8 land described in the application upon which the overburden
 9 exists. The burden is on the applicant to demonstrate that
 10 any area should not be deleted under this subsection.

11 {4}{11} If the department finds that the operation will
 12 constitute a hazard to a dwelling house, public building,
 13 school, church, cemetery, commercial or institutional
 14 building, public road, stream, lake, or other public
 15 property, the department shall delete those areas from the
 16 prospecting, strip-mining, or underground-mining permit
 17 application before it can be approved. In no case may strip
 18 or--underground--mining STRIP- OR UNDERGROUND-COAL-MINING be
 19 allowed within 300 feet of any occupied dwellings, unless
 20 waived by the owner, nor within 300 feet of any public
 21 building, school, church, community, or institutional
 22 building, or public park; nor within 100 feet of a cemetery;
 23 nor within 100 feet of the outside right-of-way line of any
 24 public road, except where mine access roads or haulage roads
 25 join such right-of-way line. The department may permit such

1 roads to be relocated or the area affected to lie within 100
 2 feet of the road, if after public notice and opportunity for
 3 public hearing in the locality, a written finding is made
 4 that the interests of the public and the landowners affected
 5 will be protected.

6 (8) No surface-mining STRIP- OR UNDERGROUND-MINING may
 7 be conducted within 500 feet of active or abandoned
 8 underground mines in order to prevent breakthroughs and to
 9 protect health or safety of miners. The department shall
 10 permit an operator to mine near, through, or partially
 11 through an abandoned underground mine or closer to an active
 12 underground mine if:

13 (a) the nature, timing, and sequencing of specific
 14 strip-mine activities and specific underground-mine
 15 activities are jointly approved by the department and the
 16 regulatory authority concerned with the health and safety of
 17 underground miners; and

18 (b) such operations will result in improved resource
 19 recovery, abatement of water pollution, or elimination of
 20 hazards to the health and safety of the public.

21 (9) The department may not approve an application for
 22 a strip- or underground-coal-mining operation if the area
 23 proposed to be mined is included within an area designated
 24 unsuitable for strip or underground coal mining or within an
 25 area under review for this designation under an

administrative proceeding, unless in such an area as to which an administrative proceeding has commenced pursuant to this part, the operator making the permit application demonstrates that prior to January 1, 1977, he made substantial legal and financial commitments in relation to the operation for which he is applying for a permit.

(10) No permit or major permit revision for a strip- or underground-coal-mining operation may be issued unless the applicant has affirmatively demonstrated by its coal conservation plan that no failure to conserve coal will occur. The department may require the applicant to submit any information it considers necessary for review of the coal conservation plan.

(11) Whenever information available to the department indicates that any strip- or underground-mining UNDERGROUND-COAL-MINING operation owned or controlled by the applicant is currently in violation of Public Law 95-87, as amended, or any state law required by Public Law 95-87, as amended, or any law, rule, or regulation of the United States or of any department or agency in the United States pertaining to air or water environmental protection, the department shall not issue a strip-mining- or underground-mining STRIP- OR UNDERGROUND-COAL-MINING permit or major revision until the applicant submits proof that the violation has been corrected or is in the process of being

corrected to the satisfaction of the administering agency.

(12) The department may not issue a strip-mining- or underground-mining STRIP- OR UNDERGROUND-COAL-MINING permit or major revision to any applicant which it finds, after an opportunity for hearing, owns or controls any strip- or underground-mining UNDERGROUND-COAL-MINING operation which has demonstrated a pattern of willful violations of Public Law 95-87, as amended, or any state law required by Public Law 95-87, as amended, of such a nature and duration and with such resulting irreparable damage to the environment to indicate an intent not to comply with the provisions of this part.

(13) Subject to valid existing rights, no strip- or underground-coal-mining operations except those which existed as of August 3, 1977, may be conducted on private lands within the boundaries of units of the national park system, the national wildlife refuge systems, the national wilderness preservation system, the wild and scenic rivers system, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act, or national recreation areas designated by act of congress."

NEW SECTION. Section 10. Designation of land unsuitable for coal mining. (1) Any person having an interest that is or may be adversely affected may petition the department to have an area designated as unsuitable for

1 strip- or underground-coal-mining operations, or to have a
 2 designation terminated. The petition shall contain
 3 allegations of facts with supporting evidence which would
 4 tend to establish the allegations. Within 10 months after
 5 receipt of the petition, the department shall hold a public
 6 hearing in the locality of the affected area after giving
 7 appropriate notice and publication of the date, time, and
 8 location thereof. Before the hearing, any person may
 9 intervene by filing allegations of facts with supporting
 10 evidence which would tend to establish the allegations.
 11 Within 60 days after the hearing, the department shall issue
 12 and furnish to the petitioner and any other party to the
 13 hearing, a written decision regarding the petition and the
 14 reasons therefor. The hearing need not be held if all
 15 petitioners reach agreement prior to the requested hearing
 16 and withdraw their request.

17 (2) If petitioned, the department shall review the
 18 area petitioned for pursuant to this section, and:

19 (a) shall designate it as an area unsuitable for all
 20 or certain types of strip- or underground-coal-mining
 21 operations if it is determined that reclamation pursuant to
 22 the requirements of this part is not technologically and
 23 economically feasible; and

24 (b) may designate it as an area unsuitable for all or
 25 certain types of strip or underground coal mining if the

1 proposed coal mining operations will:

2 (i) be incompatible with existing state or local
 3 land-use plans or programs to the extent they affect mining
 4 in the area; or

5 (ii) affect fragile or historic lands in which these
 6 operations could result in significant damage to important
 7 historic, cultural, scientific, and esthetic values and
 8 natural systems; or

9 (iii) affect renewable resource lands in which these
 10 operations could result in a substantial loss or reduction
 11 of long-range productivity of water supply or of food or
 12 fiber products; these lands to include aquifers and aquifer
 13 recharge areas; or

14 (iv) affect natural hazard lands in which these
 15 operations could substantially endanger life and property,
 16 these lands to include areas subject to frequent flooding
 17 and areas of unstable geology.

18 (3) Prior to designating any land areas as unsuitable
 19 for strip- or underground-coal-mining operations, the
 20 department shall prepare a detailed statement on:

21 (a) the potential coal resources of the area;

22 (b) the demand for coal resources; and

23 (c) the impact of this designation on the environment,
 24 economy, and supply of coal.

25 (4) A designation does not prevent mineral exploration

1 pursuant to this act of any area so designated.

2 (5) The requirements of this section do not apply to
3 lands on which strip- or underground-coal-mining operations
4 are being conducted pursuant to a permit issued under this
5 part or where substantial legal and financial commitments in
6 these operations were in existence prior to January 4, 1977.

7 ~~{6}--This-section-does-not-become-effective-until--the~~
8 ~~secretary--of--interior--has--approved-the-state's-permanent~~
9 ~~regulatory-program-under-Public-Law-95-87.~~

10 Section 11. Section 82-4-231, MCA, is amended to read:

11 "82-4-231. Submission of and action on reclamation
12 plan. (1) As rapidly, completely, and effectively as the
13 most modern technology and the most advanced state of the
14 art will allow, each operator granted a permit under this
15 part shall reclaim and revegetate the land affected by his
16 operation, except that underground tunnels, shafts, or other
17 subsurface excavations need not be revegetated. Under the
18 provisions of this part and rules adopted by the board, an
19 operator shall prepare and carry out a method of operation,
20 plan of grading, backfilling, highwall reduction,
21 subsidence stabilization, water control, topsoiling, and a
22 reclamation plan for the area of land affected by his
23 operation. In developing a method of operation and plans of
24 backfilling, subsidence stabilization, water control,
25 grading, highwall reduction, topsoiling, and reclamation,

1 all measures shall be taken to eliminate damages to
2 landowners and members of the public, their real and
3 personal property, public roads, streams, and all other
4 public property from soil erosion, subsidence, landslides,
5 water pollution, and hazards dangerous to life and property.

6 (2) The reclamation plan shall set forth in detail the
7 manner in which the applicant intends to comply with this
8 section and 82-4-232 through 82-4-234, as amended, and the
9 steps to be taken to comply with applicable air and water
10 quality laws and rules and any applicable health and safety
11 standards. The ~~plan~~ application for permit or major revision
12 of a permit, which shall contain the reclamation plan, shall
13 be submitted to the department, ~~and the department shall~~
14 ~~notify the applicant by certified or registered mail within~~
15 ~~120 days after receipt of the plan and complete application~~
16 ~~if it is or is not acceptable.~~ The department shall notify
17 various local governmental bodies, planning agencies, sewage
18 and water treatment authorities, and water companies in the
19 locality in which the proposed mining will take place of the
20 application and provide a reasonable time for them to submit
21 written comments. Any person having an interest which is or
22 may be adversely affected or the officer or head of any
23 federal, state, or local governmental agency or authority
24 shall have the right to file written objections to the
25 proposed initial or revised application for permit or major

1 ~~revision within 30 days of the applicant's published notice.~~
 2 ~~If written objections are filed and an objector requests an~~
 3 ~~informal conference, the department shall hold an informal~~
 4 ~~conference in the locality of the proposed operation after~~
 5 ~~adequate public notice. The department may arrange with the~~
 6 ~~applicant upon request by any party to the administrative~~
 7 ~~proceeding for access to the proposed mining area for the~~
 8 ~~purpose of gathering information relevant to the proceeding.~~
 9 ~~The department shall notify the applicant by certified or~~
 10 ~~registered mail within 120 days after receipt of the~~
 11 ~~complete application if it is or is not acceptable. The~~
 12 ~~department may extend the 120 days an additional 120 days~~
 13 ~~upon notification of the operator in writing. The department~~
 14 ~~shall make written findings granting or denying the permit~~
 15 ~~or revision application in whole or in part. If the pten~~
 16 ~~application is not acceptable, the department shall set~~
 17 ~~forth the reasons why the pten it is not acceptable, and it~~
 18 ~~may propose modifications, delete areas, or reject the~~
 19 ~~entire pten application. A landowner, operator, or any~~
 20 ~~person aggrieved by the decision of the department with an~~
 21 ~~interest that is or may be adversely affected may by written~~
 22 ~~notice request a hearing by the board. The hearing shall be~~
 23 ~~held within 30 days of the request. No person who presided~~
 24 ~~at the informal conference may either preside at the hearing~~
 25 ~~or participate in the decision thereon. For purposes of the~~

1 ~~hearing, the board may order site inspections of the area~~
 2 ~~pertinent to the application. The board shall notify the~~
 3 ~~person by certified or registered mail and all other persons~~
 4 ~~by regular mail within 20 days after the hearing of its~~
 5 ~~decision. Every reclamation plan shall be subject to annual~~
 6 ~~review and modification.~~

7 (3) In addition to the method of operation, grading,
 8 backfilling, subsidence stabilization, water control,
 9 highwall reduction, topsoiling, and reclamation requirements
 10 of this part and rules adopted under this part, the
 11 operator, consistent with the directives of subsection (1)
 12 of this section, shall:

13 (a) bury under adequate fill all toxic materials,
 14 shale, mineral, or any other material determined by the
 15 department to be acid producing, toxic, undesirable, or
 16 creating a hazard;

17 (b) as directed by rules seal off tunnels, shafts, or
 18 other openings or any breakthrough of water creating a
 19 hazard;

20 (c) impound, drain, or treat all runoff or underground
 21 mine waters so as to reduce soil erosion, damage to grazing
 22 and agricultural lands, and pollution of surface and
 23 subsurface waters;

24 (d) remove or bury all metal, lumber, and other refuse
 25 resulting from the operation;

1 (e) use explosives in connection with the operation
2 only in accordance with department regulations designed to
3 minimize noise, damage to adjacent lands, and water
4 pollution and ensure public safety and for other purposes;

5 (f) adopt measures to prevent land subsidence unless
6 the board approves a plan for inducing subsidence into an
7 abandoned operation in a predictable and controlled manner
8 with measures for grading, topsoiling, and revegetating the
9 subsided land surface. In order for a controlled subsidence
10 plan to be approved, the applicant must show that subsidence
11 will not cause a direct or indirect hazard to any public or
12 private buildings, roads, facilities, or use areas,
13 constitute a hazard to human life or health, or constitute a
14 hazard to domestic livestock or to a viable agricultural
15 operation, or violate any other restrictions the board may
16 consider necessary.

17 (g) stockpile and protect from erosion all mining and
18 processing wastes until these wastes can be disposed of
19 according to the provisions of this part;

20 (h) deposit as much stockpiled waste material as
21 possible back into the mine voids upon abandonment in such
22 manner as to prevent or minimize land subsidence. The
23 remaining waste material shall be disposed of as provided by
24 this part and the rules of the board.

25 (i) seal all portals, entryways, drifts, shafts, or

1 other openings between the surface and underground mine
2 workings upon abandonment ~~when no longer needed~~;

3 ~~(j) to the extent possible using the best technology~~
4 ~~currently available, minimize disturbances and adverse~~
5 ~~impacts of the operation on fish, wildlife, and related~~
6 ~~environmental values and achieve enhancement of such~~
7 ~~resources where practicable;~~

8 ~~(k) minimize the disturbances to the prevailing~~
9 ~~hydrologic balance at the mine site and in associated~~
10 ~~offsite areas and to the quality and quantity of water in~~
11 ~~surface-water and ground-water systems both during and after~~
12 ~~strip- or underground-mining UNDERGROUND-COAL-MINING~~
13 ~~operations and during reclamation by;~~

14 ~~(l) avoiding acid or other toxic mine drainage by such~~
15 ~~measures as, but not limited to:~~

16 ~~(A) preventing or removing water from contact with~~
17 ~~toxic-producing deposits;~~

18 ~~(B) treating drainage to reduce toxic content which~~
19 ~~adversely affects downstream water upon being released to~~
20 ~~water courses;~~

21 ~~(C) casing, sealing, or otherwise managing boreholes,~~
22 ~~shafts, and wells and keeping acid or other toxic drainage~~
23 ~~from entering ground and surface waters;~~

24 ~~(ii) (A) conducting strip- or underground-mining~~
25 ~~operations so as to prevent, to the extent possible using~~

1 the best technology currently available; additional
 2 contributions of suspended solids to streamflow or runoff
 3 outside the permit area but in no event shall contributions
 4 be in excess of requirements set by applicable state or
 5 federal law;

6 (B) constructing any siltation structures pursuant to
 7 (iii)(A) of this subsection prior to commencement of strip-
 8 or underground-mining operations; such structures to be
 9 certified by a qualified registered engineer to be
 10 constructed as designed and as approved in the reclamation
 11 plan;

12 (iii) cleaning out and removing temporary or large
 13 settling ponds or other siltation structures from drainways
 14 after disturbed areas are revegetated and stabilized and
 15 depositing the silt and debris at a site and in a manner
 16 approved by the department;

17 (iv) restoring recharge capacity of the mined area to
 18 approximate premining conditions;

19 (v) avoiding channel deepening or enlargement in
 20 operations requiring the discharge of water from mines;

21 (vi) preserving throughout the mining and reclamation
 22 process the essential hydrologic functions of alluvial
 23 valley floors in the arid and semiarid areas of the country;
 24 and

25 (viii) such other actions as the department may

1 prescribe;

2 (1) conduct strip- or underground-mine operations in
 3 accordance with the approved coal conservation plan;

4 (m) stabilize and protect all surface areas, including
 5 spoil piles, to effectively control air pollution;

6 (n) seal all auger holes with an impervious and
 7 noncombustible material in order to prevent drainage except
 8 where the department determines that the resulting
 9 impoundment of water in such auger holes may create a hazard
 10 to the environment or the public health and safety;

11 (o) develop contingency plans to prevent sustained
 12 combustion;

13 (p) refrain from construction of roads or other access
 14 ways up a streambed or drainage channel or in such proximity
 15 to such channel so as to seriously alter the normal flow of
 16 water;

17 (q) meet such other criteria as are necessary to
 18 achieve reclamation in accordance with the purposes of this
 19 part, taking into consideration the physical,
 20 climatological, and other characteristics of the site;

21 (r) with regard to underground mines, eliminate fire
 22 hazards and otherwise eliminate conditions which constitute
 23 a hazard to health and safety of the public;

24 (s) locate openings for all new drift mines working
 25 acid-producing or iron-producing coal seams in such a manner

4

1 ~~as to prevent a gravity discharge of water from the mine.~~

2 (4) An operator may not throw, dump, pile, or permit
3 the dumping, piling, or throwing or otherwise placing any
4 overburden, stones, rocks, mineral, earth, soil, dirt,
5 debris, trees, wood, logs, or any other materials or
6 substances of any kind or nature beyond or outside of the
7 area of land which is under permit and for which a bond has
8 been posted under 82-4-223, as amended, or place the
9 materials described in this section in such a way that
10 normal erosion or slides brought about by natural physical
11 causes will permit the materials to go beyond or outside of
12 that area of land. ~~An operator shall conduct the strip- or~~
13 ~~underground-mining operation in such a manner as to protect~~
14 ~~areas outside the permit area."~~

15 Section 12. Section 82-4-232, MCA, is amended to read:

16 "82-4-232. Area mining required -- bond -- alternative
17 plan. (1) Area strip mining, a method of operation which
18 does not produce a bench or fill bench, is required where
19 strip mining is proposed. All highwalls must be reduced and
20 the steepest slope of the reduced highwall shall be no
21 greater than 20 degrees from the horizontal. Highwall
22 reduction shall be commenced at or beyond the top of the
23 highwall and sloped to the graded spoil bank. Reduction,
24 backfilling, and grading shall eliminate all highwalls and
25 spoil peaks. The area of land affected shall be restored to

1 the approximate original contour of the land. When directed
2 by the department, the operator shall construct in the final
3 grading such diversion ditches, depressions, or terraces as
4 will accumulate or control the water runoff. Additional
5 restoration work may be required by the department according
6 to rules adopted by the board.

7 (2) In addition to the backfilling and grading
8 requirements, the operator's method of operation on steep
9 slopes may be regulated and controlled according to rules
10 adopted by the board. These rules may require any measure
11 whatsoever to accomplish the purpose of this part.

12 ~~(3) For COAL MINING ON prime farmlands, the board~~
13 ~~shall establish by rule specifications for soil removal,~~
14 ~~storage, replacement, and reconstruction, and the operator~~
15 ~~shall as a minimum be required to:~~

16 ~~(a) segregate the A horizon of the natural soil,~~
17 ~~except where it can be shown that other available soil~~
18 ~~materials will create a final soil having a greater~~
19 ~~productive capacity; and if not utilized immediately,~~
20 ~~stockpile this material separately from other spoil, and~~
21 ~~provide needed protection from wind and water erosion or~~
22 ~~contamination by other acid or toxic material;~~

23 ~~(b) segregate the B horizon of the natural soil, or~~
24 ~~underlying C horizon or other strata, or a combination of~~
25 ~~such horizons or other strata that are shown to be both~~

1 texturally and chemically suitable for plant growth and that
 2 can be shown to be equally or more favorable for plant
 3 growth than the B horizon in sufficient quantities to create
 4 in the regraded final soil a root zone of comparable depth
 5 and quality to that which existed in the natural soil; and
 6 if not utilized immediately stockpile this material
 7 separately from other spoil, and provide needed protection
 8 from wind and water erosion or contamination by acid or
 9 toxic material;

10 (c) replace and regrade the root zone material
 11 described in (b) above with proper compaction and uniform
 12 depth over the regraded spoil material; and

13 (d) redistribute and grade in a uniform manner the
 14 surface soil horizon described in (a) above.

15 {3}{4} All available topsoil shall be removed in a
 16 separate layer, guarded from erosion and pollution, AND kept
 17 in such a condition that it can sustain vegetation of at
 18 least the quality and variety it sustained prior to removal,
 19 and--returned--as-the-top-layer-after-the-operation-has-been
 20 backfilled-and-graded, provided that the operator shall
 21 accord substantially the same treatment to any subsurface
 22 deposit of material that is capable, as determined by the
 23 department, of supporting surface vegetation virtually as
 24 well as the present topsoil. After the operation has been
 25 backfilled and graded, the topsoil or the best available

1 subsurface deposit of material which is best able to support
 2 vegetation shall be returned as the top layer.

3 {4}{5} As determined by rules of the board, time
 4 limits shall be established requiring backfilling, grading,
 5 subsidence stabilization, water control, highwall reduction,
 6 topsoiling, planting, and revegetation to be kept current.
 7 All backfilling, subsidence stabilization, sealing, grading,
 8 and topsoiling shall be completed before necessary equipment
 9 is moved from the operation.

10 {5}{6} When the backfilling, grading, subsidence
 11 stabilization, water controls, and topsoiling have been
 12 completed and approved by the department, the commissioner,
 13 after public notice and opportunity for hearing, may
 14 release so much of the bond which was filed for that portion
 15 of the operation as the commissioner may determine, provided
 16 that no less than \$200 per acre shall be retained by the
 17 department until such time as the planting and revegetation
 18 is done according to law and approved by the department, at
 19 which time the commissioner shall release the bond in the
 20 remaining amount. No part of the bond or deposit may be
 21 released under this subsection so long as the lands to which
 22 the release would be applicable are contributing suspended
 23 solids to streamflow or runoff outside the permit area in
 24 excess of the requirements set by this part or until soil
 25 productivity for prime farmlands MINED FOR COAL has returned

1 to equivalent levels of yield as nonmined land of the same
 2 soil type in the surrounding area under equivalent
 3 management practices as determined from the soil survey
 4 performed pursuant to this part. Where a silt dam is to be
 5 retained as a permanent impoundment, the portion of bond
 6 pertaining thereto may be released under this subsection so
 7 long as provisions for sound future maintenance by the
 8 operator or the landowner have been made with the
 9 department. Any person with a valid legal interest that
 10 might be adversely affected by release of the bond or the
 11 responsible head of any federal, state, or local
 12 governmental agency that has jurisdiction by law or special
 13 expertise with respect to any environmental, social, or
 14 economic impact involved in the operation or is authorized
 15 to develop and enforce environmental standards with respect
 16 to such operations shall have the right to file written
 17 objections to the proposed release with the department
 18 within 30 days of public notice. The hearing shall be held
 19 at the state capital or, if an objector so requests, in the
 20 locality of the proposed bond release. For purposes of the
 21 hearing, the board may order site inspections of the area
 22 for which bond release is sought and other strip- or
 23 underground-mining operations carried on by the applicant in
 24 the area. Without prejudice to the rights of the objectors
 25 or the applicant or to the responsibilities of the

1 department, the department may establish an informal
 2 conference to resolve written objections.

3 (6)(7) An operator may propose alternative plans other
 4 than backfilling, grading, highwall reduction, or topsoiling
 5 if the restoration will be consistent with the purpose of
 6 this part. These plans shall be submitted to the department,
 7 and after consultation with the landowner, if the plans are
 8 approved by the board and complied with within the time
 9 limits as may be determined by the board as being reasonable
 10 for carrying out the plans, the backfilling, grading,
 11 highwall reduction, or topsoiling requirements of this part
 12 may be modified by the board. An operator who proposes
 13 alternative plans that will affect an existing permit shall
 14 comply with the notice requirement of 82-4-222(1)(k)."

15 Section 13. Section 82-4-235, MCA, is amended to read:
 16 "82-4-235. Planting report. (1) At least 60 days prior
 17 to the date of each permit expiration, the operator shall
 18 file a planting report with the department on a form to be
 19 prescribed and furnished by the department, giving the
 20 following information:

- 21 (a) identification of the operation;
- 22 (b) the type of planting or seeding, including
- 23 mixtures and amounts;
- 24 (c) the date of planting or seeding;
- 25 (d) the area of land planted;

(e) any other relevant information the department requires.

(2) All planting reports shall be certified by the operator.

(3) Inspection and evaluation for permanent diverse vegetative cover shall be made as soon as it is possible to determine if a satisfactory stand has been established. If the department determines that a satisfactory permanent diverse vegetative cover has been established, it shall release the remaining bond held on the area reclaimed after public notice and an opportunity for a hearing as provided in 82-4-232(6). In no event shall such remaining bond be released prior to a period of 5 10 years from the initial planting provided for in 82-4-233 after the last year of augmented seeding, fertilizing, irrigation, or other work required under this part for those operations or portions of operations that were seeded after February 2, 1978, or prior to a period of 5 years after initial planting for all exploration activities and all other operations."

Section 14. Section 82-4-239, MCA, is amended to read:

"82-4-239. Reclamation by board. (1) The board may have reclamation work done by its own employees or by employees of other governmental agencies, soil conservation districts, or through contracts with qualified persons. The board may construct, operate, and maintain plants for the

control and treatment of water pollution resulting from mine drainage.

(2) Any funds or any public works programs available to the board shall be used and expended to reclaim and rehabilitate lands that have been subjected to strip mining or underground mining that have not been reclaimed and rehabilitated in accordance with the standards of this part. The board shall cooperate with federal, state, and private agencies to engage in cooperative projects under this section.

(3) Agents, employees, or contractors of the department may enter upon any land for the purpose of conducting studies or exploratory work to determine whether such land has been strip- or underground-mined and not reclaimed and rehabilitated in accordance with the requirements of this part and to determine the feasibility of restoration, reclamation, abatement, control, or prevention of any adverse effects of past coal-mining practices. Upon request of the commissioner, the attorney general shall bring an injunctive action to restrain any interference with the exercise of the right to enter and inspect granted in this subsection.

(4) If the department makes a finding of fact that:
(a) land or water resources have been adversely affected by past coal-mining practices; and

(b) the adverse effects are at a stage where in the public interest action to restore, reclaim, abate, control, or prevent should be taken; and

(c) the owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices are not known or readily available; or the owners will not give permission for the department or its agents, employees, or contractors to enter upon such property to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices;

then agents, employees, or contractors of the department, after giving notice by mail to the owner, if known, or, if not known, by posting notice upon the premises and advertising in a newspaper of general circulation in the county in which the land lies, may enter upon property adversely affected by past coal-mining practices and any other property necessary for access to such mineral property to do all things necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices. This act is not an act of condemnation of property or of trespass but rather an exercise of the power granted by sections 1 and 2, Article IX of the Montana constitution.

(5) (a) Within 6 months after the completion of

projects to restore, reclaim, abate, control, or prevent adverse effects of past coal-mining practices on privately owned land, the department shall itemize the money so expended and may file a statement thereof in the office of the clerk and recorder of the county in which the land lies, together with a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control, or prevention of adverse effects of past coal-mining practices if the money so expended shall result in a significant increase in property value. Such statement constitutes a lien upon the land. The lien may not exceed the amount determined by the appraisal to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices. No lien may be filed against the property of any person, in accordance with this subsection, who owned the surface prior to May 2, 1977, and who neither consented to nor participated in nor exercised control over the mining operation which necessitated the reclamation performed under this part.

(b) The landowner may petition within 60 days of the filing of the lien to determine the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the

~~adverse effects of past coal-mining practices. The amount reported to be the increase in value of the premises constitutes the amount of the lien and shall be recorded with the statement herein provided. Any party aggrieved by the decision may appeal as provided by law.~~

~~(c) The lien provided in this section shall be recorded at the office of the county clerk and recorder. The statement constitutes a lien upon the land as of the date of the expenditure of the money and has priority as a lien second only to the lien of real estate taxes imposed upon the land.~~

~~(d) The board may acquire the necessary property by gift or purchase or, if the property cannot be acquired by gift or purchase at a reasonable cost, proceedings may be instituted in the manner provided in Title 70, chapter 30, part 1, against all nonaccepting landholders if:~~

~~(a) the property is necessary for successful reclamation;~~

~~(b) the acquired land after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices will serve recreation and historic purposes, conservation and reclamation purposes, or provide open space benefits; and~~

~~(c) permanent facilities such as treatment plants or relocated stream channels will be constructed on the land~~

~~for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past strip- or underground-coal-mining practices; or acquisition of coal refuse disposal sites and all coal refuse thereon will serve the purposes of [this part] in that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal-mining practices."~~

Section 15. Section 82-4-251, MCA, is amended to read:

"82-4-251. Noncompliance -- suspension of permits. (1) ~~if any of the requirements of this part or rules or orders of the department and the board have not been complied with within the time limits set by the department or the board or by this party the department shall serve a notice of noncompliance on the operator or where found necessary the commissioner shall order the suspension of a permit. The notice or order shall be handed to the operator in person or served by certified or registered mail addressed to the permanent address shown on the application for a permit. The notice of noncompliance or order of suspension shall specify in what respects the operator has failed to comply with this part or the rules or orders of the department and the board. If the operator has not complied with the requirement set forth in the notice of noncompliance or order of suspension within time limits set therein the permit may be revoked by~~

1 order-of-the-board-and-the-performance-bond-forfeited-to-the
 2 department. The commissioner or an authorized representative
 3 of the department shall, if he determines on the basis of an
 4 inspection that any condition or practices exist or that the
 5 permittee is in violation of any requirement of this part or
 6 any permit condition required by the part that creates an
 7 imminent danger to the health or safety of the public or is
 8 causing or can reasonably be expected to cause significant
 9 and imminent environmental harm to land, air, or water
 10 resources, immediately order cessation of strip- or
 11 underground-mining UNDERGROUND-COAL-MINING and reclamation
 12 operations or the portion thereof relevant to the condition,
 13 practice, or violation. The cessation order remains in
 14 effect until the commissioner or his authorized
 15 representative determines that the condition, practice, or
 16 violation has been abated or until modified, vacated, or
 17 terminated by the commissioner or his authorized
 18 representative pursuant to subsection (5). If the
 19 commissioner or his authorized representative finds that the
 20 ordered cessation of strip- or underground-coal-mining and
 21 reclamation operations, or any portion thereof, will not
 22 completely abate the imminent danger to the health or safety
 23 of the public or the significant and imminent environmental
 24 harm to land, air, or water resources, he shall in addition
 25 to the cessation order impose affirmative obligations on the

1 operator requiring him to take whatever steps the
 2 commissioner or his authorized representative considers
 3 necessary to abate the imminent danger or the significant
 4 environmental harm.

5 (2) When, on the basis of an inspection, the
 6 department determines that any permittee is in violation of
 7 any requirement of this part or any permit condition
 8 required by this part which does not create an imminent
 9 danger to the health or safety of the public or cannot be
 10 reasonably expected to cause significant and imminent
 11 environmental harm to land, air, or water resources, the
 12 commissioner or authorized representative shall issue a
 13 notice to the permittee or his agent fixing a reasonable
 14 time not exceeding 90 days, for the abatement of the
 15 violation and providing opportunity for public hearing. If,
 16 upon expiration of the period of time as originally fixed or
 17 subsequently extended, for good cause shown and upon the
 18 written finding of the commissioner or his authorized
 19 representative, the commissioner or his authorized
 20 representative finds that the violation has not been abated,
 21 he shall immediately order a cessation of strip- or
 22 underground-coal-mining UNDERGROUND-MINING and reclamation
 23 operations or the portion thereof relevant to the violation.
 24 Such cessation order remains in effect until the
 25 commissioner or his authorized representative determines

1 that the violation has been abated or until modified,
 2 vacated, or terminated by the commissioner or his authorized
 3 representative pursuant to subsection (5). In the order of
 4 cessation issued under this subsection, the commissioner
 5 shall determine the steps necessary to abate the violation
 6 in the most expeditious manner possible and shall include
 7 the necessary measures in the order.

8 (3). When, on the basis of an inspection, the
 9 commissioner or his authorized representative determines
 10 that a pattern of violations of any requirements of this
 11 part or any permit conditions required by this part exists
 12 or has existed and if the commissioner or his authorized
 13 representative also finds that such violations are caused by
 14 the unwarranted failure of the permittee to comply with any
 15 requirements of this part or any permit conditions or that
 16 such violations are willfully caused by the permittee, the
 17 commissioner or his authorized representative shall
 18 forthwith issue an order to the permittee to show cause as
 19 to why the permit should not be suspended or revoked and
 20 shall provide opportunity for a public hearing. If a hearing
 21 is requested the commissioner shall inform all interested
 22 parties of the time and place of the hearing. Upon the
 23 permittee's failure to show cause as to why the permit
 24 should not be suspended or revoked, the commissioner or his
 25 authorized representative shall forthwith suspend or the

1 board shall revoke the permit. When a permit has been
 2 revoked, the board may order the performance bond forfeited.

3 (2)(4) Any additional permits held by an operator
 4 whose mining permit has been revoked shall be suspended and
 5 the operator is not eligible to receive another permit or to
 6 have the suspended permits reinstated until he has complied
 7 with all the requirements of this part in respect to former
 8 permits issued him. An operator who has forfeited a bond is
 9 not eligible to receive another permit unless the land for
 10 which the bond was forfeited has been reclaimed without cost
 11 to the state or the operator has paid into the reclamation
 12 account a sum together with the value of the bond the board
 13 finds adequate to reclaim the lands. The department may not
 14 issue any additional permits to an operator who has
 15 repeatedly been in noncompliance or violation of this part.

16 (5) Notices and orders issued pursuant to this section
 17 shall set forth with reasonable specificity the nature of
 18 the violation and the remedial action required, the period
 19 of time established for abatement, and a reasonable
 20 description of the portion of the strip- or
 21 underground-coal-mining UNDERGROUND-MINING and reclamation
 22 operation to which the notice or order applies. Each notice
 23 or order issued under this section shall be given promptly
 24 to the permittee or his agent by the department or the
 25 commissioner or his authorized representative who issues the

notice or order. All such notices and orders must be in writing and be signed by the authorized representatives. Any notice or order issued pursuant to this section may be modified, vacated, or terminated by the commissioner or his authorized representative, provided that any notice or order issued pursuant to this section that requires cessation of mining by the operator expires within 30 days of actual notice to the operator unless a public hearing is held at the site or within such reasonable proximity to the site that any viewings of the site can be conducted during the course of public hearing.

(6) An operator issued a notice or an order of abatement pursuant to this section or any person having an interest that is or may be adversely affected by an order or by modification, vacation, or termination of an order, may apply to the department for review of that order within 30 days of its issuance or within 30 days of its modification, vacation, or termination. Upon receipt of the application, the department shall make an investigation. The investigation shall provide an opportunity for public hearing at the request of the applicant or the person having an interest who is or may be adversely affected, to enable the applicant or the person to present information relating to the issuance and continuance of the notice, order, or the modification, vacation, or termination of it. The filing of

an application for review under this subsection may not operate as a stay of any order or notice. The department shall make findings of fact and issue a written decision incorporating an order vacating, affirming, modifying, or terminating the order.

(7) Whenever an order is issued under this section or as the result of any administrative proceeding under [this part], at the request of any person a sum equal to the aggregate amount of all costs, expenses, and attorney fees as determined by the department to have been reasonably incurred by such person for or in connection with his participation in such proceedings, including any judicial review of agency actions, may be assessed against either party as the court, resulting from judicial review, or the department, resulting from administrative proceedings, considers proper.

(8) In order to protect the stability of the land, the commissioner or his authorized representative shall order cessation of underground coal mining under urbanized areas, cities, towns, and communities and adjacent to industrial or commercial buildings, major impoundments, or permanent streams if he finds imminent danger to inhabitants of the urbanized areas, cities, towns, and communities."

Section 16. Section 82-4-252, MCA, is amended to read:

"82-4-252. Mandamus. (1) A resident of this state OR

1 ANY PERSON HAVING AN INTEREST WHICH IS OR MAY BE ADVERSELY
 2 AFFECTED, with knowledge that a requirement of this part or
 3 a rule adopted under this part is not being enforced or
 4 implemented by a public officer or employee whose duty it is
 5 to enforce or implement the requirement or rule, may bring
 6 the failure to enforce to the attention of the public
 7 officer or employee by a written statement under oath that
 8 shall state the specific facts of the failure to enforce the
 9 requirement or rule. Knowingly making false statements or
 10 charges in the affidavit subjects the affiant to penalties
 11 prescribed under the law of perjury.

12 (2) If the public officer or employee neglects or
 13 refuses for an unreasonable time after receipt of the
 14 statement to enforce OR IMPLEMENT the requirement or rule,
 15 the resident OR PERSON HAVING AN INTEREST WHICH IS OR MAY BE
 16 ADVERSELY AFFECTED may bring an action of mandamus in the
 17 district court of the first judicial district of this state,
 18 in and for the county of Lewis and Clark, or in the district
 19 court of the county in which the land is located. The
 20 court, if it finds that a requirement of this part or a rule
 21 adopted under this part is not being enforced, shall order
 22 the public officer or employee whose duty it is to enforce
 23 the requirement or rule to perform his duties. If he fails
 24 to do so, the public officer or employee shall be held in
 25 contempt of court and is subject to the penalties provided

1 by law.

2 (3) Any person having an interest that is or may be
 3 adversely affected may commence a civil action on his own
 4 behalf to compel compliance with this part against any
 5 person for the violation of this part or any rule, order, or
 6 permit issued hereunder. However, no such action may
 7 commence:

8 (a) prior to 60 days after the plaintiff has given
 9 notice in writing to the department and to the alleged
 10 violation; or

11 (b) if the department has commenced and is diligently
 12 prosecuting a civil action to require compliance with the
 13 provisions of this part in any rule, order, or permit issued
 14 hereunder. Any person may intervene as a matter of right in
 15 any such civil action. Nothing in this section restricts any
 16 right that any person may have under any statute or common
 17 law to seek enforcement of this part or the rules adopted
 18 hereunder or to seek any other relief.

19 (4) Any person who is injured in his person or
 20 property through the violation by any operator of any rule,
 21 order, or permit issued pursuant to this part may bring an
 22 action for damages (including reasonable attorney and expert
 23 witness fees) only in the county in which the strip- or
 24 underground-coal-mining operation complained of is located.
 25 Nothing in this subsection affects the rights established by

1 or limits imposed under chapter 71 of Title 39.

2 (5) The court, in issuing any final order in any
 3 action brought pursuant to subsection (3), may award costs
 4 of litigation (including attorney and expert witness fees)
 5 to any party whenever the court determines such award is
 6 appropriate. The court may, if a temporary restraining order
 7 or preliminary injunction is sought, require the filing of a
 8 bond or equivalent security in accordance with the Montana
 9 Rules of Civil Procedure."

10 Section 17. Section 82-4-254, MCA, is amended to read:

11 "82-4-254. Violation -- penalty. (1) A person or
 12 operator who violates any of the provisions of this part, or
 13 rules or orders adopted under this part, or permits, terms, or
 14 conditions, and any director, officer, or agent of a
 15 corporation who willfully authorizes, orders, or carries out
 16 a violation, shall pay a civil penalty of not less than \$100
 17 or more than ~~\$1,000~~ \$5,000 for the violation and an
 18 additional civil penalty of not less than \$100 or more than
 19 ~~\$1,000~~ \$5,000 for each day during which a violation
 20 continues and may be enjoined from continuing such
 21 violations as hereinafter provided in this section. These
 22 ~~penalties shall be recoverable in any action brought in the~~
 23 ~~name of the state of Montana by the attorney general in the~~
 24 ~~district court of the first judicial district of this state~~
 25 ~~in and for the county of Lewis and Clark or in the district~~

1 ~~court having jurisdiction of the defendant. Any person or~~
 2 ~~operator who fails to correct a violation within the period~~
 3 ~~permitted by law, rule of the board or department, or order~~
 4 ~~of the commissioner shall be assessed a penalty of not less~~
 5 ~~than \$750 for each day during which such failure or~~
 6 ~~violation continues. The period permitted for correction of~~
 7 ~~a violation shall not, in the case of any review proceeding~~
 8 ~~under 82-4-251(6), end until entry of a final order~~
 9 ~~suspending the abatement requirements or until entry of an~~
 10 ~~order of court ordering suspension of the abatement~~
 11 ~~requirements.~~

12 (2) ~~The attorney general shall, upon the request of~~
 13 ~~the commissioner, sue for the recovery of the penalties~~
 14 ~~provided for in this section and bring an action for a~~
 15 ~~restraining order, temporary or permanent injunction~~
 16 ~~against an operator or other person violating or threatening~~
 17 ~~to violate an order adopted under this part. The department~~
 18 ~~shall notify the person or operator of the violation. The~~
 19 ~~person or operator shall by filing a written request within~~
 20 ~~20 days of receipt of the notice of violation be entitled to~~
 21 ~~a hearing on the issues of whether the alleged violation has~~
 22 ~~occurred and whether the penalty proposed to be assessed is~~
 23 ~~proper. The department shall issue a statement of proposed~~
 24 ~~penalty no more than 10 days after notice of violation.~~
 25 ~~After the hearing or after the time for requesting a hearing~~

1 ~~has expired, the board shall make findings of fact and shall~~
 2 ~~issue a written decision as to the occurrence of the~~
 3 ~~violation and the amount of penalty warranted and shall~~
 4 ~~order the payment of a penalty in that amount. The person or~~
 5 ~~operator shall remit the amount of the penalty within 30~~
 6 ~~days of the order. If the person or operator wishes to~~
 7 ~~obtain judicial review of the assessment, he shall submit~~
 8 ~~with the penalty a statement that the penalty is being paid~~
 9 ~~under protest and the department shall hold the payment in~~
 10 ~~escrow until judicial review is complete. Any person or~~
 11 ~~operator who fails to request and submit testimony at the~~
 12 ~~hearing provided for in this subsection or who fails to pay~~
 13 ~~the assessed penalty under protest within 30 days of the~~
 14 ~~order assessing the penalty forfeits his right to seek~~
 15 ~~judicial review of the violation or penalty determinations.~~
 16 ~~These penalties are recoverable in any action brought in the~~
 17 ~~name of the state of Montana by the attorney general in the~~
 18 ~~district court of the first judicial district of this state,~~
 19 ~~in and for the county of Lewis and Clark, or the district~~
 20 ~~having jurisdiction over the defendant.~~

21 ~~(3) A--person--who--willfully--violates--any--of--the~~
 22 ~~provisions--of--this--part--or--any--determination--or--order~~
 23 ~~adopted--under--this--part--which--has--become--final--is--guilty--of~~
 24 ~~a--misdemeanor--and--shall--be--fined--not--less--than--\$500--and--not~~
 25 ~~more--than--\$5,000--Each--day--on--which--a--violation--occurs~~

1 ~~constitutes--a--separate--offense. The attorney general shall,~~
 2 ~~upon request of the commissioner, sue for the recovery of~~
 3 ~~the penalties provided for in this section and bring an~~
 4 ~~action for a restraining order or temporary or permanent~~
 5 ~~injunction against an operator or other person who:~~

6 ~~(a) violates, threatens to violate, or fails or~~
 7 ~~refuses to comply with any order or decision issued under~~
 8 ~~this part;~~

9 ~~(b) interferes with, hinders, or delays the department~~
 10 ~~in carrying out the provisions of the part;~~

11 ~~(c) refuses to admit an authorized representative of~~
 12 ~~the department to the permit area;~~

13 ~~(d) refuses to permit inspection of the permit area by~~
 14 ~~an authorized representative of the department;~~

15 ~~(e) refuses to furnish any information or report~~
 16 ~~requested by the department in furtherance of the provisions~~
 17 ~~of this part;~~

18 ~~(f) refuses to permit access to, and copying of, such~~
 19 ~~records as the department determines to be necessary in~~
 20 ~~carrying out the provisions of this part.~~

21 ~~(4) Any relief granted by a court under subsection~~
 22 ~~(3)(a) continues in effect until the completion or final~~
 23 ~~termination of all proceedings for review of such under this~~
 24 ~~part, unless, prior thereto, the district court granting the~~
 25 ~~relief sets it aside or modifies it.~~

(5) A person who violates any of the provisions of this part, any determination or order adopted under this part, or who willfully violates any permit condition issued under this part is guilty of a misdemeanor and shall be fined not less than \$500 and not more than \$10,000 or imprisoned for not more than 1 year, or both. Each day on which the violation occurs constitutes a separate offense.

(6) Any person who knowingly makes any false statement, representation, or certification, or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this part shall, upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than 1 year, or both.

(7) Any person who except as permitted by law willfully resists, prevents, impedes, or interferes with the department or its agents in the performance of duties pursuant to this part shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than 1 year, or both.

(8) No employee of the department performing any function or duty under this part shall have a direct or indirect financial interest in any strip- or underground-coal-mining operation. Whoever knowingly

violates the provisions of this subsection shall, upon conviction, be punished by a fine of not more than \$2,500 or by imprisonment of not more than 1 year, or both."

Section 18. Section 70-30-102, MCA, is amended to read:

"70-30-102. Public uses enumerated. Subject to the provisions of this chapter, the right of eminent domain may be exercised in behalf of the following public uses:

(1) all public uses authorized by the government of the United States;

(2) public buildings and grounds for the use of the state and all other public uses authorized by the legislature of the state;

(3) public buildings and grounds for the use of any county, city or town, or school district; canals, aqueducts, flumes, ditches, or pipes conducting water, heat, or gas for the use of the inhabitants of any county, city, or town; raising the banks of streams, removing obstructions therefrom, and widening, deepening, or straightening their channels; roads, streets, and alleys and all other public uses for the benefit of any county, city, or town or the inhabitants thereof, which may be authorized by the legislature; but the mode of apportioning and collecting the costs of such improvements shall be such as may be provided in the statutes or ordinances by which the same may be

1 authorized;

2 (4) wharves, docks, piers, chutes, booms, ferries,
3 bridges, of all kinds, private roads, plank and turnpike
4 roads, railroads, canals, ditches, flumes, aqueducts, and
5 pipes for public transportation, supplying mines, mills, and
6 smelters for the reduction of ores and farming neighborhoods
7 with water and drainage and reclaiming lands and for
8 floating logs and lumber on streams not navigable and sites
9 for reservoirs necessary for collecting and storing water.
10 However, such reservoir sites must possess a public use
11 demonstrable to the district court as the highest and best
12 use of the land.

13 (5) roads, tunnels, ditches, flumes, pipes, and
14 dumping places for working mines, mills, or smelters for the
15 reduction of ores; also outlets, natural or otherwise, for
16 the flow, deposit, or conduct of tailings or refuse matter
17 from mines, mills, and smelters for the reduction of ores;
18 also an occupancy in common by the owners or the possessors
19 of different mines of any place for the flow, deposit, or
20 conduct of tailings or refuse matter from their several
21 mines, mills, or smelters for reduction of ores and sites
22 for reservoirs necessary for collecting and storing water.
23 However, such reservoir sites must possess a public use
24 demonstrable to the district court as the highest and best
25 use of the land.

1 (6) private roads leading from highways to residences
2 or farms;

3 (7) telephone or electric light lines;

4 (8) telegraph lines;

5 (9) sewerage of any city, county, or town or any
6 subdivision thereof, whether incorporated or unincorporated,
7 or of any settlement consisting of not less than 10 families
8 or of any public buildings belonging to the state or to any
9 college or university;

10 (10) tramway lines;

11 (11) electric power lines;

12 (12) logging railways;

13 (13) temporary logging roads and banking grounds for
14 the transportation of logs and timber products to public
15 streams, lakes, mills, railroads, or highways for such time
16 as the court or judge may determine; provided, the grounds
17 of state institutions be excepted;

18 (14) underground reservoirs suitable for storage of
19 natural gas;

20 (15) to mine and extract ores, metals, or minerals
21 owned by the plaintiff located beneath or upon the surface
22 of property where the title to said surface vests in others.
23 However, the use of the surface for strip mining or open pit
24 mining of coal (i.e., any mining method or process in which
25 the strata or overburden is removed or displaced in order to

1 extract the coal) is not a public use, and eminent domain
2 may not be exercised for this purpose;

3 ~~(16) to restore and reclaim lands strip- or~~
4 ~~underground-mined for coal and not reclaimed in accordance~~
5 ~~with Title 82, chapter 4, part 2, and to abate or control~~
6 ~~adverse effects of strip or underground mining on those~~
7 ~~lands."~~

8 NEW SECTION. Section 19. Applicability. (1) THIS ACT
9 DOES NOT BECOME EFFECTIVE UNTIL THE SECRETARY OF INTERIOR
10 HAS CONDITIONALLY OR FINALLY APPROVED THE STATE'S PERMANENT
11 REGULATORY PROGRAM UNDER PUBLIC LAW 95-87; HOWEVER, RULES
12 PURSUANT TO THIS ACT MAY BE ADOPTED PURSUANT TO TITLE 2,
13 CHAPTER 4, PRIOR TO THE EFFECTIVE DATE OF THIS ACT AND SHALL
14 BECOME EFFECTIVE ONLY ON THE EFFECTIVE DATE OF THIS ACT.

15 (2) Within 2 months of the secretary of interior's
16 approval of the state's permanent regulatory program
17 pursuant to section 503 of Public Law 95-87, as amended,
18 each operator shall submit to the department a permit
19 revision application to bring its permit into compliance
20 with this act. The burden shall be on the applicant to
21 demonstrate that the application complies with all the
22 requirements of this act. The department shall make a
23 written finding granting or denying the application within 5
24 months of its submittal. Eight months after the secretary of
25 interior's approval of the state's permanent regulatory

1 program, no operator may conduct strip- or
2 underground-mining operations unless the operator's permit
3 has been revised to conform to the requirements of this act
4 and approved by the department. Eight months after the
5 secretary of interior's approval of the state's regulatory
6 program, all strip- or underground-mining operations must be
7 conducted in accordance with Title 82, chapter 2, part 4, as
8 amended by this act.

9 Section 20. Severability. If a part of this act is
10 invalid, all valid parts that are severable from the invalid
11 part remain in effect. If a part of this act is invalid in
12 one or more of its applications, the part remains in effect
13 in all valid applications that are severable from the
14 invalid applications.

15 Section 21. Repealer. Sections 82-3-101 through
16 82-3-110, MCA, are repealed.

-End-

STATE OF MONTANA

REQUEST NO. 496-79

FISCAL NOTE

Form BD-15

In compliance with a written request received March 23, , 19 79 , there is hereby submitted a Fiscal Note for Senate Bill 515 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

Senate Bill 515 is an act to make only those amendments necessary to bring the Montana Strip and Underground Mine Reclamation Act into compliance with Public Law 95-87, the Surface Mining and Control and Reclamation Act of 1977.

ASSUMPTIONS:

1. Montana's permanent coal regulatory program, of which SB 515 is a major part, will be approved by the Department of Interior during FY 1980.
2. Modifications in Montana's program will occur in such areas as protection of prime farm lands, alluvial valley floors and aquifers, small operator assistance, and designation of lands unsuitable for mining.
3. Additional expenses will be necessary for mine inspections, permit review, book-keeping and Department of Interior liaison.
4. Costs associated with SB 515 will be provided via grants from the Department of Interior.

FISCAL IMPACT:

	<u>FY 80</u>	<u>FY 81</u>
Proposed Law		
Personal Services	\$396,864	\$396,460
Operating Services	<u>199,355</u>	<u>186,751</u>
Total expenditures under proposed law	\$596,219	\$583,211
Expenditures under current law	<u>422,725</u>	<u>401,803</u>
Increased expenditures under proposed law	<u>\$173,494</u>	<u>\$181,408</u>

COMMENTS:

The additional federal funds needed for this bill were requested and are included in House Bill 483.

Richard L. Dwyer
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 3/28/79